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April 27, 2010

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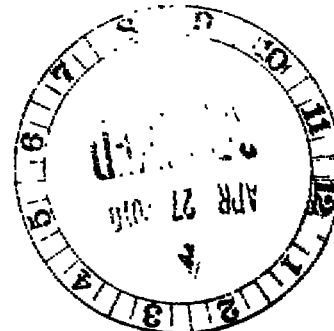
Rachel D. Campbell.
Director
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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Office of Proceedings

APR 27 2010

Part of
Public Record



Re: CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.,-
Joint Use Agreement, STB Finance Docket No. 35348

Dear Ms. Campbell:

Enclosed for filing in the above-referenced matter are the following:

1. An original and ten (10) copies of the Motion of Applicants for Issuance of a Protective Order (designated as CSXT-1 D&H-1), and a disk containing an electronic copy of the Motion.
2. An original and ten (10) copies of an Application by CSX Transportation, Inc. and Delaware and Hudson Company, Inc. for Approval of a Joint Use Agreement pursuant to 49 U.S.C. § 11323(a)(6) (designated as CSXT-2 D&H-2); a check for \$7,600.00 in payment of the filing fee for the Application; 20 unbound maps as required by 49 C.F.R. § 1180.6(a)(6); and three disks containing the Application in electronic format. The Application does not contain any confidential information and may be placed in the Board's public docket. Exhibit 2 to the Application is a public version of the Joint Use Agreement that is the subject of this proceeding; confidential information in that Agreement has been redacted.
3. An original and ten (10) copies of the Motion of Applicants to Establish a Procedural Schedule (designated as CSXT-3 D&H-3), and a disk containing an electronic copy of the Motion.
4. Eleven (11) copies of the unredacted Joint Use Agreement, which are being filed under seal subject to Applicants' pending Motion for Issuance of a Protective



Rachel D. Campbell
Page 2

Order. Applicants are also filing under seal three disks containing the unredacted Joint Use Agreement in electronic format

Please acknowledge receipt of the enclosed documents for filing by date-stamping the extra copies and returning them to our messenger. Thank you for your assistance in this matter.

If you have questions, please contact the undersigned counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence M. Hynes", with a stylized flourish at the end.

Terence M. Hynes

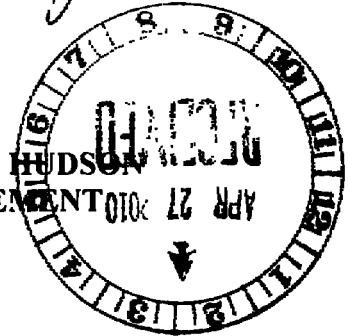
Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. & DELAWARE AND HUDSON
RAILWAY COMPANY, INC. - JOINT USE AGREEMENT**

APPLICATION



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Filing Contains Color Images

FILED

APR 27 2010

**SURFACE
TRANSPORTATION BOARD**

Dated: April 27, 2010

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EXHIBITS

- Exhibit 1-A: Map of CSXT Rail System
- Exhibit 1-B: Map of CPR/D&H Rail System
- Exhibit 1-C: Map of Joint Use Lines
- Exhibit 2: Joint Use Agreement (Redacted)
- Exhibit 15: Minor Transaction Operating Plan

APPENDIX

- Appendix 1-A: Effects on Applicant Carriers' Employees – CSXT
- Appendix 1-B: Effects on Applicant Carriers' Employees – D&H
- Appendix 2-A: Opinion of Counsel - CSXT
- Appendix 2-B: Opinion of Counsel – D&H

ATTACHMENTS

- Attachment 1: Verified Statement of Steven C. Potter
- Attachment 2: Verified Statement of Dave Craig

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. & DELAWARE AND HUDSON
RAILWAY COMPANY, INC. - JOINT USE AGREEMENT**

APPLICATION

CSX Transportation, Inc. ("CSXT") and Delaware and Hudson Railway Company, Inc. ("D&H") file this minor application pursuant to 49 U.S.C. § 11323(a)(6) and 49 C.F.R. § 1180.2(c), seeking approval from the Surface Transportation Board (the "Board") for CSXT and D&H to commence operations pursuant to that certain New York Joint Use Agreement dated as of December 1, 2009 (the "Joint Use Agreement").

Pursuant to the Joint Use Agreement, CSXT and D&H propose to use jointly a north-south rail corridor linking the New York City metropolitan area with the international border crossing at Rouses Point Junction, NY.¹ The Joint Use Lines include segments owned and operated by both CSXT and D&H. The transaction will increase traffic density and operating efficiency on the Joint Use Lines, reduce both carriers' operating costs, enable both CSXT and D&H to offer more competitive rail service to shippers, and benefit the environment by reducing fuel consumption and particulate emissions. CSXT and D&H will continue to serve all customers that they serve today, and no shipper will lose a rail competitive option as a result of the proposed transaction. There are no interchange commitments in the Joint Use Agreement.

¹ The rail lines involved in the proposed transaction (which are referred to herein as the "Joint Use Lines") are described in detail at pp. 5-6, *infra*.

Testimony supporting this Application is set forth in the Verified Statement of CSXT witness Steven C. Potter (“V.S. Potter”) appended as Attachment 1, and in the Verified Statement of D&H witness Dave Craig (“V.S. Craig”) appended as Attachment 2.

BACKGROUND

This section provides an overview of Applicants and the proposed transaction:

A. CSXT

CSXT is a wholly owned subsidiary of CSX Corporation. CSXT is a Class I railroad that currently owns and operates approximately 21,000 miles of railroad lines located in 23 Northeastern, Southeastern and Midwestern States, the District of Columbia and the Canadian Provinces of Ontario and Quebec.

As relevant to this Application, CSXT currently provides service between the Eastern United States and points in Eastern Canada via its rail lines between Selkirk and Syracuse, NY and its St. Lawrence and Montreal Subdivisions (the “Massena Line”) between Syracuse, NY and Huntingdon, PQ. CSXT currently interchanges such cross-border rail traffic with Canadian National Railway Company (“CN”) at Huntingdon, with CN handling the traffic to and from the Montreal terminal area. Approximately 35,000 carloads moved over the Massena Line during 2009, 49 percent of which were cars originating and/or terminating on the Massena Line and 51 percent of which were overhead traffic interchanged with CN at Huntingdon.

CSXT’s current route between Selkirk, NY and Huntingdon, PQ is approximately 370 miles long, consisting of 156 miles between Selkirk and Syracuse, and 214 miles between Syracuse and Huntingdon. CN’s route between Huntingdon and Montreal is an additional 33 miles, so that the current CSXT/CN route via Huntingdon totals 403 miles. (V.S. Potter at 3-4.) One-way transit time (not including terminal time) is approximately six hours between Selkirk and Syracuse, 16 hours between Syracuse and Huntingdon, and seven hours between Huntingdon

and Montreal. Thus, the total, one-way transit time for traffic moving between Selkirk and Montreal via the current CSXT/CN route is approximately 29 hours. (*Id.*) As explained below, the proposed joint use arrangement will give CSXT access to a route via D&H's Saratoga Springs – Rouses Point Junction, NY line that is 142 miles shorter – or 35 percent – than the current CSXT/CN route via the Massena Line and Huntingdon, PQ, and will reduce transit time by about 13 hours. (V.S. Potter at 4.)

B. D&H

D&H is a wholly owned indirect subsidiary of Canadian Pacific Railway Company (“CPR”). D&H owns and/or operates 1,138 miles of rail lines in the States of New Jersey, New York and Pennsylvania. D&H currently accesses the New York City metropolitan area via trackage rights over CSXT’s “East-of-the-Hudson” rail line and a related switching agreement with CSXT. D&H obtained those rights in connection with the acquisition of Conrail by CSXT and Norfolk Southern Railway Company (“NS”). See *CSX Corp. et al. – Control – Conrail Inc., et al.*, 3 S.T.B. 196, 282-283 (1998) (“*Conrail*”). The Board granted those rights to D&H for the purpose of “restor[ing] a modicum of competition that was lost in the financial crisis that led to the formation of Conrail.” *Conrail* at 283. Pursuant to the *Conrail* decision, D&H and CSXT (as successor to New York Central Lines LLC) entered into an agreement under which CSXT granted D&H overhead trackage rights over CSXT’s lines between Schenectady, NY and Oak Point Yard, NY, and between Oak Point Yard and Fresh Pond Junction, NY (for the purpose of interchanging traffic with the New York & Atlantic Railway Company (“NY&A”)). Pursuant to a related switching agreement (the “Oak Point Switching Agreement”), CSXT handles cars for

the account of D&H to and from customers in the Boroughs of Queens and The Bronx, NY, and for interchange with NY&A at Fresh Pond Junction.²

With respect to operations affected by the Application, D&H currently operates two trains per week in each direction between Albany and New York City via a route consisting of D&H's line between Albany and Schenectady; trackage rights over CSXT's line between Schenectady and Poughkeepsie, NY; trackage rights over lines owned by Metro North Commuter Railroad ("MNCR") between Poughkeepsie and MP 7 near High Bridge, NY (the point of connection to the Oak Point Link and Harlem River Yard); and trackage rights over CSXT and Amtrak lines between Harlem River Yard, Oak Point Yard and Fresh Pond Junction. (V.S. Craig at 3.) D&H's traffic volume, which has declined to an average of less than 27 revenue carloads per train, is not sufficient to support more frequent profitable train service. D&H believes that it must be able to offer daily service to and from New York City in order to be an effective competitor in the Albany – New York City corridor. Moreover, the operation of infrequent short trains deprives D&H of economies of density and increases its operating costs. (*Id.*) Under the proposed joint use arrangement, D&H will – for the first time – be able to offer shippers service between Albany and New York City on a five to seven days per week basis.

C. The Proposed Transaction

The transaction proposed by this Application involves the joint use of certain rail lines owned by CSXT or D&H located between Rouses Point Junction, NY³ and Fresh Pond Junction, NY. Specifically, the Joint Use Lines encompass the following segments:

² D&H was also granted certain rights to use the Harlem River Yard (the "Harlem River Yard Agreement").

³ Rouses Point Junction is the physical end point of D&H's Saratoga Springs – Rouses Point Segment, described below.

(i) D&H's rail line between D&H's Saratoga Springs Yard located at D&H Milepost 36.10 \pm in the vicinity of Saratoga Springs, NY and the United States – Canada border at D&H Milepost 192.08 \pm in the vicinity of Rouses Point Junction, NY, a total distance of approximately 155.98 miles (the "Saratoga Springs – Rouses Point Segment");

(ii) D&H's line of railroad between a point of connection with CSXT near D&H's Kenwood Yard located at D&H Milepost 0.00 \pm in the vicinity of Albany, NY and D&H's Saratoga Springs Yard located at D&H Milepost 36.10 \pm in the vicinity of Saratoga Springs, NY, consisting of: (i) D&H's Colonie Main Line between Milepost 0.00 \pm and a point of connection with D&H's Freight Main Line at CPF 467 (D&H Milepost 19.10 \pm); (ii) D&H's Freight Main Line between CPF 467 (D&H Milepost 467.4 \pm) and a point of connection with D&H's Canadian Connector at CPF 478 (D&H Milepost 477.96 \pm); (iii) D&H's Canadian Connector between CPF 478 and a point of connection with D&H's Canadian Main Line at CPC 24 (D&H Milepost 24.34 \pm); and (iv) D&H's Canadian Main Line between CPC 24 and Saratoga Springs Yard at D&H Milepost 36.10 \pm , a total distance of approximately 42.52 miles (the "Albany – Saratoga Springs Segment"); and

(iii) CSXT's line of railroad between a point of connection with D&H near D&H's Kenwood Yard at CSXT Milepost QCP 7.1 in the vicinity of Albany, NY and Fresh Pond Junction, NY, consisting of: (i) CSXT's line between D&H's Kenwood Yard and CSXT's Selkirk Yard in the vicinity of Albany, NY; (ii) CSXT's line between Selkirk Yard and CP 125 in the vicinity of Selkirk, NY; (iii) CSXT's line between CP 125 and QC 75.8 in the vicinity of Poughkeepsie, NY; (iv) the line over which CSXT operates between QC 75.8 and Milepost 7 in the vicinity of High Bridge, NY; (v) CSXT's line between High Bridge and CSXT's Oak Point Yard located at QVA 19; and (vi) CSXT's line between Oak Point Yard and QVK 8 in the vicinity of Fresh Pond Junction, NY, a total distance of approximately 146.31 miles (the "Albany – Fresh Pond Segment").

Pursuant to the Joint Use Agreement, D&H has granted CSXT the right to use, jointly with D&H, the Saratoga Springs – Rouses Point Segment and the Albany – Saratoga Springs Segment. CSXT has reciprocally granted to D&H the right to use, jointly with CSXT, the Albany – Fresh Pond Segment.

The Joint Use Agreement assigns operating responsibility for each segment of the Joint Use Lines in a manner that is designed to maximize efficiency. CSXT will perform, with its own trains and crews, all operations over the Albany–Fresh Pond Segment. (*See* Exh. 2, Joint Use Agreement, § 3.01(c).) Operating efficiency will improve by adding D&H’s modest traffic volumes to CSXT’s larger trains, which will eliminate D&H’s operation of inefficient short trains in the Albany – New York City corridor and reduce the number of freight carriers conducting separate train operations over the Albany – New York Segment, which is also used by Amtrak and MNCR’s commuter trains.

Under the Joint Use Agreement, all train operations over the Saratoga Springs – Rouses Point Segment will be performed by D&H. (*See* Exh. 2, Joint Use Agreement, § 3.01(a).) CSXT cars will be handled in trains operated by D&H crews. D&H currently handles traffic for the account of both NS and CN over the Saratoga Springs – Rouses Point Segment. D&H’s successful experience with those arrangements demonstrates that having D&H operate all trains to and from Rouses Point promotes efficiency by eliminating the need to coordinate train movements involving multiple railroads, and by reducing interchange activity in the vicinity of Rouses Point Junction, NY. (V.S. Craig at 4-5.) D&H will handle CSXT/CN interchange traffic beyond Rouses Point to and from the Montreal terminal area, thereby eliminating the need for a physical interchange between CSXT and CN at Rouses Point Junction, NY.

Each carrier will perform its own train operations over the Albany – Saratoga Springs Segment, which links both carriers’ Albany area terminal facilities (CSXT’s Selkirk Yard and D&H’s Kenwood Yard) with the Saratoga Springs – Rouses Point Segment.

D. The Proposed Joint Use Arrangement Is A Minor Transaction.

The proposed transaction is a “minor” transaction, as that term is defined at 49 C.F.R. § 1180.2(c).

The proposed transaction is not a “major” transaction because it does not involve the control or merger of two Class I railroads. CSXT is a Class I railroad, while D&H is a Class II carrier. Moreover, the transaction does not involve the consolidation, control, or transfer of ownership, of any of the carriers’ rail lines. Following the transaction, CSXT and D&H will continue to be separate entities.

The proposed transaction is also not a “significant” transaction within the meaning of that term under the Board’s regulations. The Board’s regulations state that:

“[a] transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either: (1) That the transaction clearly will not have any anticompetitive effects, or (2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs.”

49 C.F.R. § 1180.2(b). As the Verified Statements of Applicants’ witnesses accompanying this Application demonstrate, the proposed transaction clearly will not have any anticompetitive effects. No shipper will lose a competitive rail option as a result of the proposed transaction. The Joint Use Agreement expressly preserves D&H’s right to serve every customer in the New York metropolitan area that it can serve today pursuant to the conditions imposed by the Board in the *Conrail* proceeding. CSXT likewise will continue to provide service to all local industries on its Massena Line.

Indeed, the proposed transaction will enhance competition, not only between D&H and CSXT, but also with other modes of transportation. D&H will become more competitive with motor carriers for traffic moving between The Bronx and Queens, on the one hand, and points north of Albany, on the other hand. Moving its traffic in CSXT’s regularly scheduled train service will greatly improve D&H’s competitive capabilities in the corridor, by enabling D&H to

increase its service offering from twice weekly to five to seven days per week, and eliminating the inefficiencies associated with D&H's current light density train operations. The substantial reduction in route miles and transit time made possible by CSXT's joint use of D&H's Saratoga Springs – Rouses Point Segment (in conjunction with D&H's handling of CSXT/CN interline traffic to and from the Montreal terminal area) will likewise enhance competition for freight moving between the Eastern United States and Eastern Canada, by creating a far more efficient CSXT/CN interline routing option for such traffic.

The proposed transaction involves rail lines located in a single state (New York), and has no regional or national significance. Nor does the proposed transaction constitute a major market extension as defined under the Board's regulations. Under the Joint Use Agreement, CSXT may utilize the Albany – Saratoga Springs and Saratoga Springs – Rouses Point Segments only for overhead traffic moving to and from CN – served points in Quebec and the Canadian Maritime Provinces, on the one hand, and the Eastern United States, on the other hand. D&H already has the right to operate between Albany and Fresh Pond Junction, NY, and to access shippers in the New York City metropolitan area, pursuant to the trackage rights and switching arrangements it obtained in the *Conrail* proceeding. The proposed transaction will neither expand nor reduce the scope of those rights – rather, it is intended to improve the efficiency of D&H's service offering in a corridor that D&H already serves today. In short, while the proposed transaction will help both CSXT and D&H to become more effective competitors in rail corridors that they serve today, it does not constitute a major market extension. *See Norfolk Southern Railway Company-Consolidation of Operations-CSX Transportation, Inc.*, ICC Finance Docket No. 32299 (ICC served August 5, 1993) at 4.

Accordingly, the proposed transaction is neither a “major” nor a “significant” transaction. and Applicants request that the Board review this Application under the procedures prescribed for a “minor” transaction.

The Joint Use Agreement does not contain any interchange commitments between CSXT and D&H.

Pursuant to the Board’s regulations at 49 C.F.R. § 1180.4, CSXT and D&H submit the following information for a minor transaction:

Section 1180.6 Supporting Information.

(a) All applications filed under 49 U.S.C. 11323 shall show in the title the names of the applicants and the nature of the proposed transaction. Beneath the title indicate the name, title, business address, and telephone number of the person(s) to whom correspondence with respect to the application should be addressed. The following information shall be included in all applications:

(1) A description of the proposed transaction, including appropriate references to any supporting exhibits and statements contained in the application and discussing the following:

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

The carriers involved in this transaction and their business addresses are:

Delaware and Hudson Railway Company, Inc.
200 Clifton Corporate Parkway
P.O. Box 8002
Clifton Park, NY 12065

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202

Questions and correspondence concerning this Application may be addressed to:

For D&H: Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
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(ii) The proposed time schedule for consummation of the proposed transaction.

Applicants expect to consummate this transaction promptly after the effective date of the Board's decision approving the transaction.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The fundamental purpose of the proposed transaction is to address certain inefficiencies in the current north-south operations of CSXT and D&H in the State of New York. By eliminating those inefficiencies, the proposed joint use arrangement will generate significant benefits for CSXT, for D&H, and for the public.

The benefits of the proposed transaction from CSXT's perspective are described in the Verified Statement of CSXT witness Steven C. Potter accompanying this Application. (See Attachment 1, V.S. Potter.) The principal benefit of the transaction for CSXT is access to the

Saratoga Springs – Rouse Point Segment, which will give CSXT a dramatically shorter route for traffic moving between Eastern Canada and the Eastern United States. That traffic currently moves via a circuitous “L-shaped” 403-mile route consisting of CSXT’s line between Selkirk Yard (near Albany) and Syracuse; CSXT’s Massena Line between Syracuse and Huntingdon, PQ; and CN’s line between Huntingdon and the Montreal terminal area. CSXT’s current route between Selkirk and Huntingdon is approximately 370 miles long, and CN’s connecting line between Huntingdon and Montreal is approximately 33 miles. (V.S. Potter at 3.)

CSXT’s use of the Saratoga Springs – Rouses Point Segment will reduce the one-way mileage for CSXT/CN interchange traffic moving between Selkirk and Montreal from 403 miles to 261 miles – or 35 percent. Eliminating that excess mileage will reduce over-the-road transit time (excluding terminal dwell time) by approximately 45 percent, from 29 hours to 16 hours. (V.S. Potter at 3-4.) These improvements will reduce CSXT’s operating costs, increase operating efficiency, and result in better service for CSXT’s customers on shipments to and from Eastern Canada.

As witness Potter explains, these efficiency gains will generate substantial cost savings for CSXT. Routing the number of CSXT/CN interline trains permitted by the Joint Use Agreement via the Joint Use Lines, rather than the more circuitous route over the Massena Line, will save 142 Gross Ton Miles (“GTMs”) for each gross ton of freight moving, in either direction, between Selkirk and Montreal. CSXT estimates that this will reduce its GTMs by about 442,000,000 annually. That large reduction in GTMs will, in turn, produce cost savings. CSXT currently employs eight or more locomotives in its CN interline service via the Massena Line to Huntingdon. Transporting CN interchange traffic via the Joint Use Lines will require only four to six locomotives, enabling CSXT to achieve locomotive and fuel related savings.

(V.S. Potter at 5.) Improved freight car utilization made possible by the shorter route via Rouses Point, NY will produce annual savings as well. CSXT anticipates that the proposed transaction will yield annual net benefits of approximately \$280,000. *Id.*

The benefits of the proposed transaction from D&H's perspective are discussed in the Verified Statement of witness Dave Craig. (*See* Attachment 2, V.S. Craig.) D&H's ability to move traffic to and from the New York metropolitan area in CSXT's regularly scheduled train service under the Joint Use Agreement will eliminate the need for it to operate inefficient low-density trains in the Albany – New York City corridor. More importantly, because CSXT operates between Albany and New York City on a daily basis, D&H will – for the first time – offer shippers rail service five to seven days per week, a vast improvement over the twice-weekly train service that D&H offers today. This feature of the joint use arrangement will significantly enhance D&H's ability to compete for traffic in the Albany – New York City corridor. (V.S. Craig at 5-6.) The joint use arrangement will also enable D&H to redeploy to more productive uses the locomotives that currently power D&H's low-volume trains between Albany and the New York City area. (*Id.*) CSXT's joint use of the Saratoga Springs – Rouses Point Segment will benefit D&H by increasing traffic density, and D&H's revenues, on that segment of its system.

The proposed transaction will also generate significant public benefits:

First, the proposed joint use arrangement will make more efficient, reliable and lower cost rail service available to shippers whose traffic moves in the north-south freight corridor served by the Joint Use Lines. Shippers of freight to and from Eastern Canada will enjoy a shorter, faster CSXT/CN interline service offering between Selkirk and Montreal via D&H's Saratoga Springs – Rouses Point Segment. The ability to transport cross-border traffic between

the Eastern United States and Eastern Canada more reliably and efficiently will promote growth in economic activity between the United States and Canada. (V.S. Potter at 4.) D&H's right to move traffic in CSXT trains between Albany and New York City will give shippers an expanded, and lower cost, D&H service option for traffic moving in (and beyond) that corridor.

Second, the proposed transaction will undoubtedly enhance competition, not only between D&H and CSXT, but also other modes of transportation. The more efficient, lower cost services that CSXT and D&H will be able to provide pursuant to the Joint Use Agreement will spur competition for freight moving through New York State, and make the rail option more competitively attractive vis-à-vis truck service. At the same time, the Joint Use Agreement expressly preserves D&H's right to serve every customer in The Bronx and Queens that it has the right to serve under its existing trackage rights and switching arrangements (as well as the continuing right to interchange traffic with the NY&A at Fresh Pond). CSXT will also continue to provide service to all shippers located on the Massena Line.⁴

Third, the proposed transaction will simplify rail operations. The Albany – Fresh Pond Segment is a busy rail corridor that is shared not only by CSXT and D&H, but also by passenger services operated by Amtrak and MNCR. The proposed joint use arrangement will simplify rail operations in the Albany – New York City corridor by eliminating separate D&H trains and reducing the overall number of freight train movements on those shared lines. D&H's handling of trains containing CSXT joint use traffic over the Saratoga Springs – Rouses Point Segment will likewise promote simplified and efficient operations by avoiding the need to coordinate train movements among multiple railroads on that line.

⁴ CSXT will institute a shuttle service over the Massena Line between Syracuse and Massena to replace the service currently provided by CSXT.

Fourth, the more efficient rail operations made possible by the Joint Use Agreement will benefit the environment. Reducing CSXT's operations by 442,000.000 GTMs and eliminating D&H's low-density train movements on the Albany – Fresh Pond Segment will produce a significant reduction in fuel consumption, particulate emissions and train noise in New York State. (See V.S. Potter at 7; V.S. Craig at 7.)

Finally, the proposed transaction will enable more efficient use of customs and border security resources at the United States-Canada border. The Rouses Point Junction gateway is the United States Customs and Border Protection's ("CBP") primary freight rail checkpoint for traffic moving to or from the Province of Quebec. Approximately three times as many freight trains cross the US-Canada border at Rouses Point as those crossing via Huntingdon, PQ. (V.S. Potter at 4.) Rerouting CSXT/CN interline traffic via D&H's Saratoga Springs – Rouses Point Segment will consolidate the vast majority of rail traffic moving between the State of New York and the Province of Quebec at single border crossing (Rouses Point), and reduce the amount of cross-border rail traffic to be cleared by CBP at Huntingdon. Consolidation of additional rail traffic at Rouses Point will enable CBP to utilize its personnel and resources more productively. Applicants' proposed operating plan provides sufficient spacing between trains so that the shift of CSXT/CN cross-border movements to Rouses Point will not adversely affect CBP's ability to process rail shipments safely and efficiently. (V.S. Potter at 4.)

(iv) The nature and amount of any new securities or other financial arrangements.

No new securities will be issued, nor will CSXT or D&H enter into any new financial arrangements, in connection with the proposed transaction.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see §1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

The proposed transaction does not involve the merger or control of two or more Class I railroads. Accordingly, the Board's analysis in this proceeding is governed by 49 U.S.C. § 11324(d). Under Section 11324(d), the Board must approve the transaction unless it finds both that: (1) the transaction is likely to result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. The Board has held that, in a proceeding governed by Section 11324(d), it "must grant the application unless there will be adverse competitive impacts that are both 'likely' and 'substantial.'" *The Indiana Rail Road Company –Acquisition–Soo Line Railroad Company*, Finance Docket No. 34783, Decision No. 4, served April 11, 2006 at 4. In another proceeding, the Board stated: "even if there will be likely and substantial anticompetitive impacts, we may not disapprove the transaction unless the anticompetitive impacts outweigh the benefits and cannot be mitigated through conditions." *Fortress Investment Group, LLC –Control–Florida East Coast Railway LLC*, Finance Docket No. 35031, Decision served September 28, 2007 at 4.⁵

⁵ See also, e.g., *Kansas City Southern–Control–The KCS Railway Co. et al.*, 7.S.T.B. 933,947-948 (2004). *Canadian National et al.–Control–Duluth et al.*, 7. S.T.B. 526, 538 (2004), *Canadian National Ry. Co., et al.–Control–Wisconsin Central Transp. Corp., et. al.*, 5 S.T.B. 890, 899 (2001).

The proposed transaction will not result in a lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. The Joint Use Agreement addresses the movement of overhead traffic in New York State – neither CSXT nor D&H will serve fewer (or more) locations than it does today. The agreement expressly preserves D&H's right to serve every customer in The Bronx and Queens that it has the right to serve under the trackage rights and switching arrangements that it obtained pursuant to the condition imposed in *Conrail*. CSXT likewise will continue to serve all shippers on the Massena Line, and all shippers between Albany Port, NY and New York City, NY that it serves today. No shipper will experience a reduction in the number of rail competitive options available to it as a result of the proposed transaction.

To the contrary, Applicants believe that the proposed transaction will significantly enhance competition, not only between CSXT and D&H (and among Applicants and other railroads) but also with other modes of transportation in the corridors served by the Joint Use Lines. The lack of a daily service offering between Albany and New York City has seriously hampered D&H's ability to compete successfully for traffic in that corridor. Moreover, D&H's declining Albany – New York City traffic volume requires it to operate low density trains, depriving D&H of economies of density and rendering its service less cost-competitive. (V.S. Craig at 3.) The proposed joint use arrangement will eliminate these inefficiencies in D&H's service, and enable it to compete more effectively with CSXT and trucks for traffic moving between the New York metropolitan area and points to the north. *Id.*

Likewise, access to the Saratoga Springs – Rouses Point Segment will enhance CSXT's competitive capabilities by eliminating the circuitry in CSXT's current interline route with CN for rail traffic moving between the Eastern United States and Eastern Canada. The faster transit time

and lower costs made possible by the Joint Use Agreement will improve the ability of CSXT (and CN) to compete for cross-border rail shipments.

In short, the proposed joint use arrangement will strengthen the competitive capabilities of both CSXT and D&H, by allowing them to operate more efficiently and to offer better service products.

The Board also considers the effect of a proposed transaction on geographic and product competition. As stated above, there will be no change in the shippers served by CSXT or D&H as a result of the proposed transaction. While CSXT and D&H will use the Joint Use Lines in common, they will remain competitors – indeed, each will be a more efficient competitor. In any event, there is ample intramodal and intermodal competition in the geographic area that is the subject of the proposed transaction. CSXT serves the north-south corridor linking the Eastern United States and Eastern Canada via the Massena Line and CSXT's interchange with CN at Huntingdon. In addition to D&H (CPR), that corridor is also served by NS and CN (both of which already enjoy the competitive advantage of access to D&H's efficient route via Rouses Point). Numerous trucking companies, and water carriers at the ports of Montreal and St. John, NB, also compete for freight traffic moving to and from Eastern Canada. There will be no reduction in competition between CSXT and D&H (or in the number of railroads competing in the corridor) and, therefore, no potential for a reduction in product or geographic competition as a result of the proposed transaction.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

No financial consideration is involved in the proposed transaction other than the user charges payable by CSXT and D&H, respectively, for their use of the Joint Use Lines. Those

charges were negotiated and agreed to between CSXT and D&H as a result of arms length bargaining.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

Neither CSXT nor D&H will incur any fixed charges in connection with the proposed transaction. Therefore, there will be no effect from fixed charges on CSXT's or D&H's financial condition.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

For the reasons discussed above, the proposed transaction will enhance the rail transportation services available to shippers in the north-south corridor served by the Joint Use Lines. D&H will utilize the proposed joint use arrangement to offer daily rail service, at lower cost, in the Albany – New York City corridor. Access to the Saratoga Springs – Rouses Point Segment will create a shorter, faster CSXT/CN service route for cross-border traffic moving between the Eastern United States and Eastern Canada. The transaction will not result in the abandonment of any rail lines or the elimination of any rail facilities.⁶

CSXT currently serves 15 major customers at points along the Massena Line.⁷ Local freight is shuttled on a daily basis between Syracuse and Massena in the same trains that handle overhead traffic for interchange with CN at Huntingdon, PQ, with prior or subsequent movement

⁶ D&H will retain its existing trackage rights over CSXT's lines between Albany and Fresh Pond. However, D&H will not exercise those rights, and conduct separate train operations, during the term of the Joint Use Agreement. Upon termination of the Joint Use Agreement, D&H has the right immediately to reinstitute operations under its trackage rights agreement with CSXT. See Exh. 2, Joint Use Agreement, § 2.05 (b).

⁷ Alcoa, Norfalco Sales, Black River Generation, LLC, U.S. Military, EKA Chemicals, Inc., Packaging Corp. of America, PPG Industries, National Silicates, Ltd., Recylage De Papier Hanna Ltd., Interstate Commodities Corporation, Cellu Tissue Corp., CSX Transflo Terminals, Cargill, Inc., Reynolds Metals Co., Rotondo Warehouse, and Northeast Biofuels Collaborative.

to and from customer facilities handled by CSXT local trains. At one time, CSXT operated a transfer train between Syracuse and Massena five days per week. CSXT combined the work of this transfer assignment with its overhead trains in response to the current economic environment and reduced economic activity along the Massena Line. Following implementation of the proposed transaction, CSXT anticipates re-instituting a shuttle train service between Syracuse and Massena on a two to three days per week basis.⁸ Local trains that currently serve customers along the Massena Line will continue to operate as they do today. There will be no change in service to any local industry served by CSXT between Selkirk and Syracuse, nor will there be any change in rail service to the U.S. Military at Fort Drum or to CSXT customers located in the vicinity of Syracuse.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

As a result of the proposed transaction, train starts on the Massena Line will be reduced, while the Joint Use Lines will experience an increase in train starts. Due to the vast difference in mileage under which CSXT employees will operate, train start additions will not match train start reductions. Nevertheless, CSXT expects that these operational changes will have a relatively small impact on CSXT employees. Specifically, CSXT estimates that there will be ten CSXT engineer (BLET) and ten CSXT conductor (UTU) jobs abolished as a result of the proposed transaction. At the same time, five new CSXT engineer (BLET) jobs and five new CSXT conductor (UTU) jobs will be created, as existing trains are terminated and new trains are created. (See Appendix 1-A for a full explanation.)

⁸ This service will allow CSXT to meet the demands of local shippers on the Massena Line.

D&H estimates that, as a result of the proposed transaction, there will be certain job assignment changes at its Saratoga Springs terminal. One locomotive engineer assignment and one conductor assignment, which currently operates D&H's trackage rights trains over the "East-of-the-Hudson" rail line, will be discontinued. At the same time, three new assignments will be created to operate new D&H trains over the Saratoga Springs – Rouses Point Segment. Because all of these assignments operate from the same home terminal (Saratoga Springs), these changes will not cause any reduction in D&H engineer or conductor employment or work opportunities. Appendix 1-B contains a detailed estimate of the anticipated impacts on D&H employees stemming from the transaction.

Applicants will not integrate their forces maintaining, dispatching or operating the Joint Use Lines. The Albany – Fresh Pond Segment will be maintained and dispatched in the same manner as it is today. The Albany – Saratoga Springs and Saratoga Springs – Rouses Point Segments will continue to be maintained by D&H and dispatched by D&H's affiliate, Soo Line Railroad Company, as before. CSXT and D&H employees working on the Joint Use Lines will be subject to management only by their existing employer.

The Board has determined, in connection with prior transactions involving the joint use of railroad lines pursuant to 49 U.S.C. § 11323(a)(6), that the appropriate level of labor protection in connection with such transactions is provided in *Norfolk and Western Ry. Co. – Trackage Rights–BN*, 354 I.C.C. 605 (1978) ("N&W"), as modified in *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980) ("Mendocino"). See, e.g., *CSX Transportation, Inc., Norfolk Southern Ry. Co., and Consolidated Rail Corp. – Joint Use and Operation Exemption*, STB Finance Docket No. 34909 (STB served October 5, 2006) at 4 (*N&W and Mendocino* conditions imposed in connection with CSXT/NS joint use agreement); *Joint Use By CSX*

Transp., Inc. & Burlington No. R.R. Co. of Facilities At Memphis, TN–Pet. for Exemption Under 49 U.S.C. 10505, ICC Finance Docket No. 31448, (ICC served June 19, 1989) (*N&W and Mendocino* conditions imposed in connection with CSXT/BN joint use agreement).

Accordingly, Applicants request that the Board impose the employee protective conditions set forth in *Norfolk and Western Ry. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978) (“*N&W*”), as modified in *Mendocino Coast Ry., Inc.–Lease and Operate*, 360 I.C.C. 653 (1980) in connection with the proposed transaction.

Neither CSXT nor D&H has reached any employee protective agreements.

(vi) The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.

Inclusion is not available as a form of relief in connection with a minor transaction. Even if such relief were available, there is no basis for including any other railroad in the proposed transaction, since the transaction will not generate any anticompetitive effects or threaten the viability of any other rail carrier.

(3) Any other supporting or descriptive statements applicants deem material.

Applicants believe that the information set forth in this Application amply supports approval of this minor transaction under applicable statutory standards and Board precedent. Applicants will furnish any information concerning this transaction that the Board may require, and will participate actively in any proceedings which the Board deems appropriate in connection with the Application. The Verified Statements of CSXT’s Assistant Vice President Network Planning and Joint Facilities, Steven C. Potter, and Dave Craig, Assistant Vice President–Strategic Network Development of D&H’s parent, CPR, describe in greater detail the benefits of the transaction.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

See Appendices 2-A and 2-B.

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

CSXT owns and operates approximately 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Quebec.

D&H owns and/or operates 1,138 miles of rail lines in the States of New Jersey, New York, and Pennsylvania.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

Exhibit 1-A to this Application is a map of the CSXT rail system. Exhibit 1-B is a map of the CPR rail system (including D&H). Exhibit 1-C contains a map depicting the Joint Use Lines, as well as the current route for CSXT/CN interchange traffic via CSXT's Massena Line and Huntingdon, PQ.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

The proposed transaction involves the joint use of rail lines by CSXT and D&H. Pursuant to the Joint Use Agreement, D&H has granted CSXT the non-exclusive right to use, jointly with D&H, the Saratoga Springs – Rouses Point Segment and the Albany – Saratoga Springs Segment. CSXT has reciprocally granted to D&H the non-exclusive right to use, jointly with CSXT, the Albany – Fresh Pond Segment. D&H's use of those portions of the Albany – Fresh Pond Segment that are owned by parties other than CSXT (Amtrak and MNCR) will continue to be governed by the terms and conditions of D&H's existing agreements with those parties.

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

A “public” copy of the Joint Use Agreement, redacted to preserve the confidentiality of proprietary and commercially sensitive information set forth in that Agreement, is submitted as Exhibit 2 to this Application. Applicants have filed with the Board, under seal, a complete and unredacted copy of the Joint Use Agreement. Applicants have also filed a Motion for Protective Order, seeking the issuance of a Protective Order by the Board to govern the submission and use of confidential (and highly confidential) materials by parties to this proceeding.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

The Saratoga Springs – Rouses Point Segment and the Albany – Saratoga Springs Segment do not comprise all of the property of D&H. The Albany – Saratoga Springs Segment consists of an approximately 42.52 mile line of railroad between a point of connection with CSXT near D&H's Kenwood Yard located at D&H Milepost 0.00± near Albany and D&H's Saratoga Springs Yard located at D&H Milepost 36.10± near Saratoga Springs. The Saratoga Springs – Rouse Point Segment consists of an approximately 155.98 mile line of railroad between D&H's Saratoga Springs Yard and the United States–Canada border near Rouses Point Junction, NY. D&H currently owns and/or operates 1,138 miles of rail lines in the States of New Jersey, New York and Pennsylvania.

The Albany – Fresh Pond Segment does not comprise all of the property of CSXT. The Albany – Fresh Pond Segment consists of an approximately 146.31 mile line of railroad between a point of connection with D&H near D&H's Kenwood Yard at CSXT Milepost QCP 7.1 near Albany and Fresh Pond Junction. CSXT currently owns and operates a rail system that includes approximately 21,000 miles of rail lines.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

The Saratoga Springs – Rouses Point Segment of the Joint Use Lines extends between D&H's Saratoga Springs Yard located at D&H Milepost 36.10 ± near Saratoga Springs, NY and the United States–Canada border at D&H Milepost 192.08 ± in the vicinity of Rouses Point Junction, NY. Rouses Point Junction is an interchange point for cross-border rail traffic handled by D&H for its own account (and for the account of NS and CN) today. D&H will deliver Joint Use traffic to, and receive Joint Use traffic from, CSXT at Saratoga Springs Yard, and will transport that traffic over the Saratoga Springs – Rouses Point Segment and through to the Montreal terminal area.

The Albany – Saratoga Springs Segment of the Joint Use Lines extends between a point of connection with CSXT's rail lines near D&H's Kenwood Yard located at D&H Milepost 0.0 ± in the vicinity of Albany, NY, and D&H's Saratoga Springs Yard located at D&H Milepost 36.10 ± near Saratoga Springs. CSXT will use the Albany – Saratoga Springs Segment to deliver Joint Use traffic to, and receive Joint Use traffic from, D&H at Saratoga Springs Yard. D&H will continue to use the Albany – Saratoga Springs Segment in connection with its operations in the Albany terminal area.

The Albany – Fresh Pond Segment extends between a point of connection between CSXT's and D&H's rail lines near D&H's Kenwood Yard at CSXT Milepost QCP 7.1 in the vicinity of Albany, and CSXT's Oak Point Yard and Milepost QVK 8 in the vicinity of Fresh Pond. CSXT will deliver Joint Use traffic to, and receive Joint Use traffic from, D&H at D&H's Kenwood Yard. CSXT will transport such traffic over the Albany – Fresh Pond Segment in regularly scheduled CSXT trains operating five to seven days per week. CSXT will continue to

provide switching services to D&H pursuant to the Oak Point Switching Agreement, and will deliver D&H cars for interchange with NY&A at Fresh Pond, NY.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the proposed transaction.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Section of Environmental Analysis for the proper format of the environmental report.

No environmental documentation is required in connection with the proposed transaction.

There will be no operational changes that exceed the thresholds established at 49 C.F.R.

§ 1105.7(e)(4) or (5), nor will there be any action that would normally require environmental documentation. Accordingly, this Application does not require environmental documentation under 49 C.F.R. §§ 1105.6(b)(4) and (c)(2)(i).

A historic report is not required because neither CSXT nor D&H proposes to abandon any rail line or other rail facility or structure. There are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older.

Section 1180.8. Operational Data.

(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

(1) Traffic level density on lines proposed for joint operations.

Under the Joint Use Agreement, no more than 8 pairs of trains (one northbound train plus one southbound train equals a pair) per week carrying CSXT Joint Use traffic, and no more than 3 trains carrying CSXT Joint Use traffic per calendar day, will move over the Albany – Saratoga

Springs Segment and the Saratoga Springs – Rouses Point Segment. As discussed above, D&H will tender Joint Use traffic to CSXT at Kenwood Yard, Oak Point Yard, or Fresh Pond for movement in CSXT trains. D&H's current traffic volume consists of approximately 54 carloads per week. D&H will not operate its low-density trains (which currently operate two days per week) on the Albany – Fresh Pond Segment.

(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

The proposed transaction will not have an adverse impact on commuter or other passenger service. As stated above, the elimination of separate D&H train operations on the Albany – Fresh Pond Segment will reduce the overall number of freight train movements on lines that are shared by Applicants with Amtrak and MNCR. D&H's use of those portions of the Albany – Fresh Pond Segment that are owned by Amtrak and MNCR, respectively, will continue to be governed by the terms and conditions set forth in D&H's agreements with those parties.

(3) Operating economies, which include, but are not limited to, estimated savings.

As described in the Verified Statement of CSXT witness Potter, the efficiency gains in CSXT operations made possible by the proposed joint use arrangement will generate cost savings. Routing CSXT/CN interline traffic via the Joint Use Lines, rather than the more circuitous route over the Massena Line, will save CSXT approximately 442,000,000 GTMs annually. This will, in turn, produce cost savings of approximately \$280,000 annually. (V.S. Potter at 5.)

D&H will also realize significant efficiency benefits from the proposed transaction. Most notably, access to CSXT train service in the Albany – New York City corridor will enable D&H to eliminate its twice-weekly, low-density train service in that corridor. This will reduce the cost

of D&H service in the corridor, and allow D&H to redeploy locomotives currently use to power its low-density trans to more productive uses. (V.S. Craig at 4-5.)

(4) Any anticipated discontinuances or abandonments.

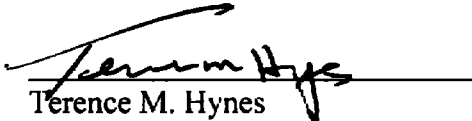
The proposed transaction does not involve the abandonment of, or discontinuance of service over, any rail lines, nor do Applicants have any plans at this time to abandon any lines involved in the proposed transaction.

CONCLUSION

The CSXT-D&H Joint Use Agreement is a pro-competitive arrangement that will produce significant benefits for both the participating railroads and the public. D&H will improve its ability to serve its current customers shipping between New York City and points to the north, and will be better positioned to compete with both CSXT and motor carriers for new business. Access to the Saratoga Springs – Rouses Point Segment will significantly improve the efficiency and cost-competitiveness of CSXT's service between the Eastern United States and Eastern Canada. Both CSXT and D&H will reduce their costs, enhance their operational efficiency, and improve the utilization of their locomotives, cars and other assets. All of these benefits can be realized without any diminution in rail competition; to the contrary, the proposed transaction will enhance both intramodal and intermodal competition in the corridors served by the Joint Use Lines.

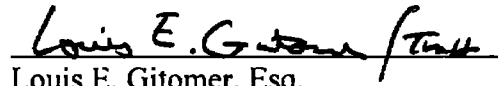
For those reasons, Applicants respectfully request that the Board enter an order approving the proposed transaction pursuant to 49 U.S.C. § 11323(a)(6), subject to the employee protective conditions contained in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980).

Respectfully submitted,



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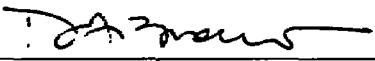
Attorneys for CSX Transportation, Inc.

Dated: April 27, 2010

VERIFICATION

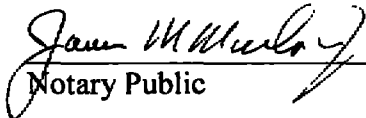
State of Florida)
) ss
County of Duval)

David A. Brown, being duly sworn, states that he is the Executive Vice President and Chief Operating Office of CSX Transportation, Inc.; that he is duly authorized to sign, verify and file the foregoing Application and the exhibits thereto on behalf of CSX Transportation, Inc.; and that such matters as are set forth therein are true and correct to the best of his knowledge, information and belief.



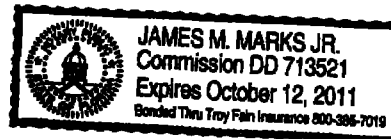
David A. Brown

Subscribed and sworn to before me this 27 day of April 2010.



Notary Public

My Commission expires: 10-12-2011



CERTIFICATE

Steven C. Armbrust certifies this 26 day of April, 2010, that he is Counsel to CSX Transportation, Inc.; that David A. Brown is Executive Vice President and Chief Operating Officer of CSX Transportation, Inc., and that he is duly authorized to sign, verify and file the foregoing Application and exhibits thereto on behalf of CSX Transportation, Inc.




Steven C Armbrust

VERIFICATION

Pursuant to 28 U.S.C. 1746

I verify under penalty of perjury that I am the President and Chief Executive Officer of Delaware and Hudson Railway Company, Inc.; that I am duly authorized to sign, verify and file the foregoing Application and the exhibits thereto on behalf of Delaware and Hudson Railway Company, Inc.; and that such matters as are set forth therein are true and correct to the best of my knowledge, information and belief.



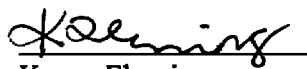
Fred Green
President and Chief Executive Officer
Delaware and Hudson Railway Company, Inc.

Executed on April 30, 2010

DECLARATION

Pursuant to 28 U.S.C. 1746

I declare under penalty of perjury that I am the Corporate Secretary of Delaware and Hudson Railway Company, Inc.; that Fred Green is President and Chief Executive Officer, LLC; and that Fred Green is duly authorized to sign, verify and file the foregoing Application and the exhibits thereto on behalf of Delaware and Hudson Railway Company, Inc



Karen Fleming
Corporate Secretary
Delaware and Hudson Railway Company, Inc.

Executed on April 1, 2010

EXHIBITS

EXHIBIT 1-A

MAP OF CSXT RAIL SYSTEM

CSX SYSTEM MAP



Exhibit 1-A - CSXT System Map
FD #35348 (CSXT-2 D&H-2)

EXHIBIT 1-B

**MAP OF DELAWARE AND HUDSON RAILWAY
COMPANY, INC. RAIL SYSTEM**

NORTH AMERICAN RAIL NETWORK

CANADIAN PACIFIC



Exhibit 1-B
CPR/D&H System Map
FD #35348 (CSXT-2 D&H-2)

EXHIBIT 1-C

MAP OF JOINT USE LINES

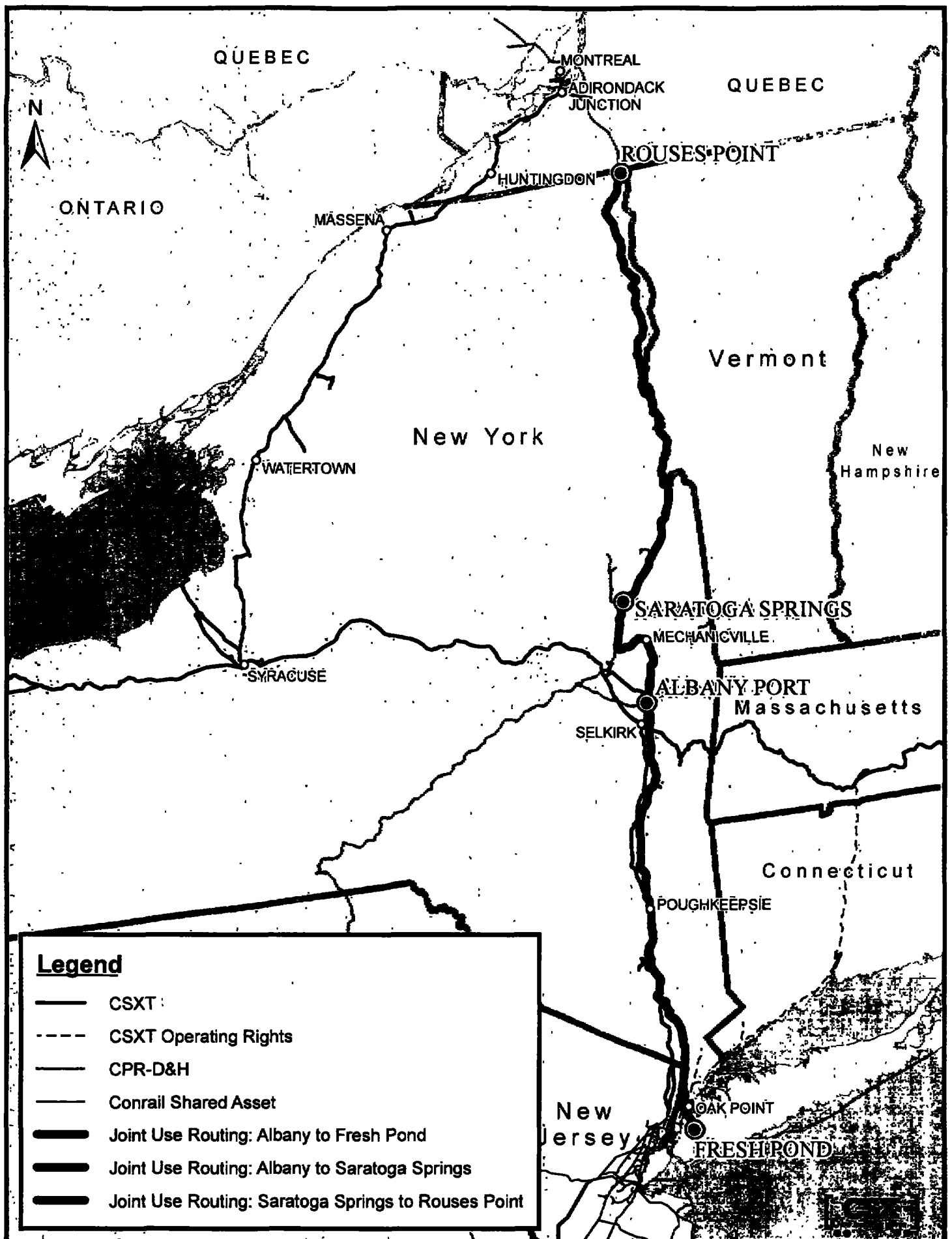


Exhibit 1-C - Joint Use Lines
FD#35348 (CSXT-2 D&H-2)

EXHIBIT 2

JOINT USE AGREEMENT

(REDACTED PURSUANT TO REQUEST FOR PROTECTIVE ORDER)

NEW YORK JOINT USE AGREEMENT

Dated as of December 1, 2009

Between

CSX TRANSPORTATION, INC.

and

DELAWARE AND HUDSON RAILWAY COMPANY, INC.

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THE NEW YORK JOINT USE AGREEMENT

This **NEW YORK JOINT USE AGREEMENT** (the "Agreement") is made as of this 1st day of December, 2009, by and between **CSX TRANSPORTATION, INC. ("CSXT")**, a Virginia corporation, and **DELAWARE AND HUDSON RAILWAY COMPANY, INC.**, a Delaware corporation d/b/a **Canadian Pacific Railway ("D&H")**. CSXT and D&H are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, D&H currently owns and operates that certain line of railroad between a point of connection with CSXT near D&H's Kenwood Yard located at D&H Milepost $0.00 \pm$ in the vicinity of Albany, NY and D&H's Saratoga Springs Yard located at D&H Milepost $36.10 \pm$ in the vicinity of Saratoga Springs, NY, consisting of (i) D&H's Colonie Main Line between Milepost $0.00 \pm$ and a point of connection with D&H's Freight Main Line at CPF 467 (D&H Milepost $19.10 \pm$); (ii) D&H's Freight Main Line between CPF 467 (D&H Milepost $467.4 \pm$) and a point of connection with D&H's Canadian Connector at CPF 478 (D&H Milepost $477.96 \pm$); (iii) D&H's Canadian Connector between CPF 478 and a point of connection with D&H's Canadian Main Line at CPC 24 (D&H Milepost $24.34 \pm$); and (iv) D&H's Canadian Main Line between CPC 24 and Saratoga Springs Yard at D&H Milepost $36.10 \pm$, a total distance of approximately 42.52 miles (the "Albany – Saratoga Springs Segment");

B. WHEREAS, D&H currently owns and operates that certain line of railroad between D&H's Saratoga Springs Yard located at D&H Milepost $36.10 \pm$ in the vicinity of Saratoga Springs, NY and the United States – Canada border at D&H Milepost $192.08 \pm$ in the vicinity of Rouses Point Junction, NY, a total distance of approximately 155.98 miles (the "Saratoga Springs – Rouses Point Segment");

C. WHEREAS, CSXT currently owns and/or operates (via trackage rights) that certain line of railroad between a point of connection with D&H near D&H's Kenwood Yard at CSXT Milepost QCP 7.1 in the vicinity of Albany, NY and Fresh Pond Junction, NY, consisting of (i) CSXT's line between D&H's Kenwood Yard and CSXT's Selkirk Yard in the vicinity of Albany, NY; (ii) CSXT's line between Selkirk Yard and CP 125 in the vicinity of Selkirk, NY; (iii) CSXT's line between CP 125 and QC 75.8 in the vicinity of Poughkeepsie, NY; (iv) the line over which CSXT operates between QC 75.8 and Milepost 7 in the vicinity of High Bridge, NY; (v) CSXT's line between High Bridge and CSXT's Oak Point Yard located at QVA 19; and (vi) CSXT's line between Oak Point Yard and QVK 8 in the vicinity of Fresh Pond Junction, NY, a total distance of approximately 146.31 miles (the "Albany – Fresh Pond Segment").

D. WHEREAS, each of CSXT and D&H desires to enhance the efficiency and competitiveness of its rail service for north-south overhead traffic in the State of New York;

E. WHEREAS, D&H has agreed to grant to CSXT the non-exclusive right to use jointly with D&H the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment on the terms and subject to the conditions set forth in this Agreement;

F. WHEREAS, CSXT has agreed to grant to D&H the non-exclusive right to use jointly with CSXT the Albany – Fresh Pond Segment on the terms and subject to the conditions set forth in this Agreement; and

G. WHEREAS, CSXT and D&H desire to set forth the terms and conditions governing their joint use of the Albany – Saratoga Springs Segment, the Saratoga Springs – Rouses Point Segment, and the Albany – Fresh Pond Segment (collectively, the “Joint Use Lines”);

NOW, THEREFORE, the Parties hereto, for good and valuable consideration, and intending to be legally bound, hereby agree as follows:

SECTION 1 DEFINITIONS

1.01. Defined Terms

As used in this New York Joint Use Agreement, the following terms shall mean as follows:

“AAR” shall mean the Association of American Railroads.

“Affiliate” shall mean, with respect to any person, any other person which directly or indirectly controls, is controlled by or is under common control with such person.

“Albany – Fresh Pond Segment” shall have the meaning set forth in Recital C.

“Albany – Saratoga Springs Segment” shall have the meaning set forth in Recital A.

“AMTRAK” shall mean the National Railroad Passenger Corporation.

“Base Calendar Year” shall mean the calendar year ending December 31, 2009.

“Board” or “STB” shall mean the United States Surface Transportation Board and any successor agency.

“CN” shall mean Canadian National Railway Company.

“CPR” shall mean Canadian Pacific Railway Company.

“CSX” shall mean CSX Corporation.

“CSXT Joint Use Traffic” shall include each loaded or empty railroad freight car, caboose or similar equipment moving in the revenue and/or car hire account of CSXT over the Joint Use Lines.

“CSXT – D&H Interline Traffic” shall mean Railcars moving via an interline route that includes CSXT, on the one hand, and D&H, on the other hand, and interchanged between the Parties.

“D&H – CSXT New York Trackage Rights Agreement” shall mean that certain agreement dated as of July 12, 1999 between D&H and CSXT as successor to New York Central Lines LLC, pursuant to which D&H has certain overhead trackage rights between (1) Schenectady, NY and Oak Point Yard, NY with the right to access customers located in the Bronx or Queens via CSXT switching, and (2) between Oak Point Yard, NY and Fresh Pond Junction, NY to effect interchange with NY&A.

“D&H Joint Use Traffic” shall include each loaded or empty railroad freight car, caboose or similar equipment moving in the revenue and/or car hire account of D&H and/or its Affiliates over the Joint Use Lines.

“Dimensional Load” shall mean a Railcar that fails to meet the specifications in the clearance file maintained by D&H (the “Clearance File”) and requires special handling or special train movements. D&H shall promptly inform CSXT of any changes made to the Clearance File.

“DOT” shall mean the U.S. Department of Transportation.

“Environmental Damage” shall mean loss or destruction of, or damage to, any property whatsoever, any injury to or death of any person or persons whomever (including employees of CSXT and D&H), and any damage to or destruction of the environment (including without limitation land, air, water, wildlife and vegetation), in each case resulting from, arising out of, incidental to or occurring in connection with a release of a substance moving in a Railcar and/or locomotive.

“Harlem River Yard Agreement” shall mean that certain agreement dated as of November 2, 1999 between D&H and CSXT pursuant to which D&H has certain rights to use the Harlem River Yard.

“Interchange Rules” shall mean the Field and Office Manuals of the AAR Interchange Rules.

“Joint Use Lines” shall have the meaning set forth in Recital G.

“Joint Use Traffic” shall mean, collectively, CSXT Joint Use Traffic and D&H Joint Use Traffic.

“Loss or Damage” shall mean any loss or destruction of, or damage to, any property whatsoever, any damage to the environment (other than Environmental Damage), and any injury to or death of any person or persons whomever (including employees of CSXT and D&H), resulting from, arising out of, incidental to or occurring in connection with this Agreement.

“Maximum Volume Restrictions” shall have the meaning set forth in Section 2.04(h).

“MNCR” shall mean Metro North Commuter Railroad.

“NSC” shall mean Norfolk Southern Corporation.

“NY&A” shall mean the New York and Atlantic Railway Company.

“NYC” shall mean New York Central Lines LLC.

“Oak Point Switching Agreement” shall mean that certain agreement dated July 13, 1999 among CSXT, NYC and D&H pursuant to which D&H was granted physical access to New York City’s Oak Point Yard via a contract switch, including access to and from customers in the Boroughs of Queens and the Bronx, NY, and pursuant to which CSXT agreed to handle cars in the account of D&H for interchange with NY&A at Fresh Pond Junction, NY.

“Outage Period” shall have the meaning set forth in Section 8.03(a).

“Railcars” shall include loaded or empty railroad freight cars, and cabooses or similar equipment.

“Rail Security-Sensitive Material” shall mean a commodity designated as a “Rail Security-Sensitive Material” pursuant to regulations issued from time to time by the Department of Homeland Security, Transportation Security Administration or United States Department of Transportation, including without limitation commodities defined as a Toxic Inhalation Hazard/Poison Inhalation Hazard (TIH/PIH), radioactive materials, and explosives.

“Saratoga Springs – Rouses Point Segment” shall have the meaning set forth in Recital B.

“Service Standards Committee” shall mean the committee established jointly by CSXT and D&H pursuant to Section 8 consisting of appropriate operating personnel of each Party.

“Term” shall have the meaning set forth in Section 10.02(a).

1.02. Other Definitional Provisions

(a) Each definition in this Agreement includes the singular and the plural, and references in this Agreement to the neuter gender include the masculine and feminine where appropriate. References herein to any agreement or contract mean such agreement or contract as amended. As used in this Agreement, the word “including” means “without limitation”, and the words “herein”, “hereof” and “hereunder” refer to this Agreement as a whole. All dollar amounts stated herein are in United States currency.

(b) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(c) The Appendices attached hereto are made part of and are hereby incorporated by reference into this Agreement.

SECTION 2 JOINT USE LINES

2.01. Description of Joint Use Lines

For purposes of this Agreement, the term “Joint Use Lines” shall mean the Albany – Saratoga Springs Segment, the Saratoga Springs – Rouses Point Segment, and the Albany – Fresh Pond Segment.

2.02. Grant of Joint Use Rights to CSXT

D&H hereby grants to CSXT the non-exclusive right to use, jointly with D&H, the rail lines included in the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment.

2.03. Grant of Joint Use Rights to D&H

CSXT hereby grants to D&H the non-exclusive right to use, jointly with CSXT, the rail lines included in the Albany – Fresh Pond Segment; provided, however, that D&H’s use of those portions of the Albany – Fresh Pond Segment that are owned by Amtrak and MNCR, respectively, shall continue to be subject to the terms and conditions set forth in D&H’s agreements with those parties.

2.04. Permitted Use of Joint Use Lines

The joint use rights granted to CSXT pursuant to Section 2.02 and to D&H pursuant to Section 2.03 shall be subject to the following terms and conditions:

(a) CSXT shall not move, or tender to D&H for handling, over the Albany – Saratoga Springs Segment and/or the Saratoga Springs – Rouses Point Segment, Railcars in the waybill and car hire accounts of any carrier other than CSXT. D&H shall not move, or tender to CSXT for handling, over the Albany – Fresh Pond Segment, Railcars in the waybill and car hire accounts of any carrier other than D&H.

(b) The joint use rights granted to CSXT and D&H pursuant to this Agreement are for overhead traffic only. CSXT shall not originate or terminate traffic, or interchange Railcars with a third party carrier, at any point on or along the Albany –Saratoga Springs Segment or the Saratoga Springs – Rouses Point Segment. Except as otherwise provided in Section 3.03(d), D&H shall not originate or terminate traffic, or interchange Railcars with a third party carrier, at any point on or along the Albany –Fresh Pond Segment.

(c) Neither D&H or its affiliates shall tender for handling by CSXT over the Albany – Fresh Pond Segment pursuant to this Agreement any Railcar containing a Rail Security-Sensitive Material.

(d) CSXT may not move, or tender for handling by D&H, pursuant to this Agreement,{

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(e) CSXT may move, or tender for handling by D&H, pursuant to this Agreement, only Railcars moving between CN-served points in Quebec and the Canadian Maritime Provinces, on the one hand, and the Eastern United States, on the other hand. CSXT shall not move CSXT – D&H Interline Traffic over the Albany – Saratoga Springs Segment or tender CSXT – D&H Interline Traffic to D&H for handling over the Saratoga Springs – Rouses Point Segment pursuant to this Agreement.

(f) {

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(g) Trains containing CSXT Joint Use Traffic moving over the Albany – Saratoga Springs Segment and the Saratoga Springs - Rouses Point Segment shall not exceed eight thousand (8,000) feet in length; provided, however, CSXT may from time to time request that D&H permit the movement of trains in excess of eight thousand (8,000) feet notwithstanding the restriction set forth in this Section 2.04(g). D&H shall consider such request(s) in light of its own existing and future traffic volumes and required reserve capacity, and may, in its sole discretion, permit the movement of a train containing CSXT Joint Use Traffic in excess of eight thousand (8,000) feet. Neither the grant of such permission by D&H in response to a request by CSXT, nor the failure of D&H to respond to such a request, shall be construed as a waiver of this Section 2.04(g) with respect to any trains containing CSXT Joint Use Traffic.

(h) Except as otherwise provided in Section 8.03(a), CSXT's joint use of the Albany – Saratoga Springs Segment and the Saratoga Springs –Rouses Point Segment shall be subject to the following limitations (the "Maximum Volume Restrictions"):

- (1) CSXT may move over the Albany – Saratoga Springs Segment, and tender for (prior or subsequent) handling by D&H over the Saratoga Springs - Rouses Point Segment, no more than eight (8) pairs of trains containing CSXT Joint Use Traffic per calendar week (Sunday through Saturday). For purposes of this Section 2.04(h)(1), one (1) "pair" of trains shall mean one (1) northbound train and one (1) southbound train.
- (2) CSXT may move over the Albany – Saratoga Springs Segment, and tender for (prior or subsequent) handling by D&H over the Saratoga Springs - Rouses Point Segment, no more than three (3) trains containing CSXT Joint Use Traffic per calendar day;

provided that the total number of trains containing CSXT Joint Use Traffic moved over the Albany – Saratoga Springs Segment and tendered for (prior or subsequent) handling by D&H over the Saratoga Springs – Rouses Point Segment during any calendar week (Sunday through Saturday) shall not exceed the limit specified in Section 2.04(h)(1). In the event CSXT desires to operate more than two (2) trains containing CSXT Joint Use Traffic on any given calendar day, CSXT shall provide D&H no less than twenty-four (24) hours advance notice prior to tendering the third train to D&H.

2.05. D&H's Existing East-of-Hudson Rights

(a) The Parties hereby acknowledge and agree that this Agreement is not intended to, and shall not operate to, expand or reduce the scope of commercial access to customers and/or facilities currently held by D&H (and/or CPR) pursuant to the conditions imposed by the STB in *CSX Corp, et al. – Control – Conrail, Inc. et al.*, 3 S.T.B. 196 (1998), and the agreements entered into among CSX, CSXT, CPR and D&H (as applicable) to implement those conditions, including but not limited to the D&H – CSXT New York Trackage Rights Agreement, the Oak Point Switching Agreement and the Harlem River Yard Agreement.

(b) The Parties hereby acknowledge and agree that execution and implementation of this Agreement shall not extinguish, modify or terminate any of the provisions of the D&H – CSXT New York Trackage Rights Agreement, the Oak Point Switching Agreement and the Harlem River Yard Agreement; provided, however, that, except as otherwise provided in Section 10.04(d), during the Term of this Agreement, D&H shall not exercise the rights granted to it pursuant to the D&H – CSXT New York Trackage Rights Agreement or the Oak Point Switching Agreement, but shall tender all D&H Joint Use Traffic moving between Albany and Fresh Pond, NY to CSXT for handling pursuant to this Agreement. D&H shall have the option, during the Term of this Agreement, to exercise the rights granted to it by the Harlem River Yard Agreement. In the event that this Agreement shall terminate as prescribed in Section 10.04 D&H shall have the right immediately to reinstitute operations pursuant to the D&H – CSXT New York Trackage Rights Agreement and the Oak Point Switching Agreement.

SECTION 3 MANAGEMENT AND OPERATION OF THE JOINT USE LINES

3.01. Train Operations

Train operations over the Joint Use Lines will be conducted in the following manner:

(a) D&H will handle, with its own trains and crews, all Joint Use Traffic moving over the Saratoga Springs – Rouses Point Segment.

(b) CSXT and D&H each will handle, with their own trains and crews, all Joint Use Traffic moving in their respective revenue and car hire accounts over the Albany – Saratoga Springs Segment.

(c) CSXT will handle, with its own trains and crews, all Joint Use Traffic moving over the Albany – Fresh Pond Segment.

3.02. Delivery and Receipt of Joint Use Traffic

(a) CSXT shall deliver northbound CSXT Joint Use Traffic, and shall receive southbound CSXT Joint Use Traffic, at D&H's Saratoga Springs Yard, on such tracks as may be designated by D&H from time to time for the delivery and receipt of CSXT Joint Use Traffic at Saratoga Springs, NY. CSXT Joint Use Traffic shall be presented to D&H at Saratoga Springs, NY or Rouses Point Junction, NY in a fully assembled train with air hoses laced, locomotives (to be supplied by CSXT pursuant to Section 9.01(c)(1)) coupled, and end of train device ("EOTD") (to be supplied by CSXT) attached. CSXT or its agent shall perform any and all air brake tests and mechanical inspections required for such trains, and shall furnish to D&H an air slip or other appropriate documentation as agreed to by the Parties. CSXT hereby acknowledges and agrees that trains containing CSXT Joint Use Traffic may not be accepted by D&H in the event that any of these requirements are not satisfied, and that CSXT shall be subject to payment of a Fixed Element charge, as defined in Section 9.01(b), regardless of whether CSXT Joint Use Traffic failing to comply with such requirements is moved.

(b) D&H shall deliver northbound CSXT Joint Use Traffic, and shall receive southbound CSXT Joint Use Traffic, at the United States – Canada border in the vicinity of Rouses Point Junction, NY. CSXT shall be responsible for performing (or causing to be performed on CSXT's behalf) in connection with southbound trains containing CSXT Joint Use Traffic each of the duties of CSXT set forth in Section 3.02(a), Section 3.04(d), Section 6.01 and Section 11.01.

(c) CSXT shall receive southbound D&H Joint Use Traffic, and shall deliver northbound D&H Joint Use Traffic, at D&H's Kenwood Yard in the vicinity of Albany, NY, on such tracks as may be designated by D&H from time to time for the delivery and receipt of D&H Joint Use Traffic at Albany, NY. CSXT shall deliver southbound D&H Joint Use Traffic, and shall receive northbound D&H Joint Use Traffic, at Oak Point Yard, NY on such tracks as may be designated by CSXT from time to time for the delivery and receipt of rail traffic at Oak Point Yard, NY. CSXT shall deliver southbound D&H Joint Use Traffic, and shall receive northbound D&H Joint Use Traffic, at Fresh Pond, NY on such tracks as may be designated by the local operating officer in charge of the trackage at Fresh Pond from time to time for the delivery and receipt of rail traffic at Fresh Pond, NY. D&H Joint Use Traffic shall be handled by CSXT over the Albany – Fresh Pond Segment in regularly scheduled CSXT train service, with CSXT-supplied crews, locomotive power, fuel and EOTD.

(d) CSXT's operation over D&H tracks and facilities in the vicinity of Saratoga Springs, NY and Kenwood Yard in connection with the delivery or receipt of Joint Use Traffic shall at all times be subject to the direction and control of the D&H operating officer in charge of such tracks and facilities

(e) Trains containing CSXT Joint Use Traffic shall be considered as physically delivered from one Party to the other Party at Saratoga Springs, NY when the train

has been placed by the delivering Party on the designated track(s) and the crew of the delivering Party has disembarked the train.

(f) Trains containing CSXT Joint Use Traffic shall be considered as physically delivered from one Party to the other Party at Rouses Point Junction, NY when the train has crossed the United States-Canada border at D&H Milepost 192.08 ± in the vicinity of Rouses Point Junction, NY.

(g) D&H Joint Use Traffic shall be considered as physically delivered to CSXT at Kenwood Yard in Albany, NY when CSXT couples onto such cars, and deemed delivered from CSXT to D&H when set out and uncoupled by CSXT, on the designated track(s) in Kenwood Yard.

(h) D&H Joint Use Traffic shall be considered as physically delivered from MNCR at MNCR's Croton-on-Hudson NY station to CSXT when CSXT couples onto such cars, and deemed delivered from CSXT to MNCR at MNCR's Croton-on-Hudson NY station when set out and uncoupled by CSXT, on the track(s) designated from time to time for the delivery of D&H Joint Use Traffic to/from MNCR.

(i) D&H Joint Use Traffic shall be considered as physically delivered from D&H's switch agent to CSXT at Oak Point Yard when CSXT couples onto such cars, and deemed delivered from CSXT to D&H's switch agent at Oak Point Yard when set out and uncoupled by CSXT on the agreed upon track(s) at customer locations.

(j) D&H Joint Use Traffic shall be considered as physically delivered from NY&A to CSXT at Fresh Pond, NY when CSXT couples onto such cars, and deemed delivered from CSXT to NY&A when set out and uncoupled by CSXT on such tracks designated by the operator of such tracks at Fresh Pond Junction, NY.

3.03. Handling of Joint Use Traffic

(a) D&H will provide the following services (as applicable) in connection with the handling of CSXT Joint Use Traffic over the Saratoga Springs – Rouses Point Segment: (i) the transportation of trains containing CSXT Joint Use Traffic between the points specified in Sections 3.02(a) and (b); (ii) movement of bad order equipment to or from repair tracks, provided, that CSXT will be billed separately for repairs to such equipment performed by D&H pursuant to Section 7 of this Agreement; (iii) such mechanical or other inspection of trains containing CSXT Joint Use Traffic as may be prescribed by regulation or D&H's operating practices; and (iv) provision of supervision as required. In the event that any Railcar moving in a train containing CSXT Joint Use Traffic delivered or caused to be delivered by CSXT to D&H, or by D&H to CSXT (or to another party on CSXT's behalf) pursuant to this Agreement is subject to the chain of custody requirements set forth at 49 C.F.R. § 1580, or other security regulations issued from time to time by the Department of Homeland Security, Transportation Security Administration or United States Department of Transportation, CSXT shall be responsible for providing all resources necessary to fulfill such requirements. If D&H provides such resources on CSXT's behalf, CSXT shall reimburse D&H for any incremental costs incurred by D&H in complying with such regulations with respect to such train.

(b) D&H shall, upon request by CSXT, provide handling of CSXT Joint Use Traffic over the Saratoga Springs – Rouses Point Segment on a seven (7) day per calendar week basis (excluding holidays observed by D&H and/or CPR).

(c) CSXT will provide the following services (as applicable) in connection with the handling of D&H Joint Use Traffic over the Albany – Fresh Pond Segment: (i) the transportation of D&H Joint Use Traffic in regularly scheduled CSXT trains between the points specified in Section 3.02(c); (ii) movement of bad order equipment to or from repair tracks, provided, that D&H will be billed separately for repairs to such equipment performed by CSXT pursuant to Section 7 of this Agreement; (iii) such mechanical or other inspection of D&H Joint Use Traffic as may be prescribed by regulation or CSXT's operating practices; and (iv) provision of supervision as required.

(d) CSXT shall continue to provide, with its own locomotives and crews, switching service for the account of D&H (i) to/from industries to which D&H has commercial access pursuant to the Oak Point Switching Agreement, (ii) to/from interchange with NY&A at Fresh Pond Junction, NY; and (iii) to/from MNCR at Croton-on-Hudson NY station points on or along the Albany – Fresh Pond Segment.

(e) CSXT shall, upon request by D&H, provide handling of D&H Joint Use Traffic over the Albany – Fresh Pond Segment in regularly scheduled CSXT trains.

(f) CSXT and D&H each shall employ best reasonable efforts to schedule train movements of Joint Use Traffic around track maintenance and capital work blocks on their respective Joint Use Lines.

3.04. CSXT Operations Over Albany – Saratoga Springs Segment

CSXT's operation of trains containing CSXT Joint Use Traffic over the Albany – Saratoga Springs Segment shall be subject to the following terms and conditions:

(a) CSXT shall use the Albany – Saratoga Springs Segment for the sole purpose of moving trains containing CSXT Joint Use Traffic delivered to, or received from, D&H at Saratoga Springs prior (or subsequent) to the handling of such trains by D&H over the Saratoga Springs – Rouses Point Segment. CSXT shall not originate or terminate traffic or perform any local freight service whatsoever at any point located on the Albany – Saratoga Springs Segment. Except as may otherwise be provided by this Agreement, CSXT shall not use any part of the Albany – Saratoga Springs Segment for the purpose of switching, storing or servicing cars or the making or breaking up of trains; provided, however, that, with D&H's prior approval, CSXT may, from time to time, make emergency use of such auxiliary tracks as may be designated by D&H for such purposes

(b) CSXT agrees to pull southbound trains containing CSXT Joint Use Traffic within two (2) hours of the arrival of such trains at Saratoga Springs Yard. In the event CSXT is unable to provide the resources required to pull such trains within two (2) hours, D&H shall have the right, at its sole option and with prior notification to CSXT, to provide the resources required to move such train to a location between Saratoga Springs Yard and Albany, where the train will be left (on such track(s) as may be designated by D&H) for further handling by CSXT. In such

an event that results in D&H incurring incremental expense, CSXT shall reimburse D&H at the rate set forth in Section 9.02(b) for costs incurred by D&H in moving such CSXT train.

(c) When a northbound train containing CSXT Joint Use Traffic is subject to the chain of custody requirements set forth at 49 C.F.R. § 1580, or other security regulations issued from time to time by the Department of Homeland Security, Transportation Security Administration or United States Department of Transportation, D&H agrees to take custody of such train within two (2) hours of the arrival of such train at Saratoga Springs Yard. In the event D&H is unable to provide the resources required to take custody of such train within two (2) hours, CSXT shall have the right, at its sole option and with prior notification to D&H, to provide any resources required to comply with applicable chain of custody or other security requirements (including the right to assign a relief crew or other CSXT personnel to monitor the train until the D&H crew arrives). In such an event that results in CSXT incurring incremental expense, D&H shall reimburse CSXT at the rate set forth in Section 9.02(b) for costs incurred by CSXT in providing such resources.

(d) Except as otherwise provided in Section 3.04(c) with respect to northbound trains containing CSXT Joint Use Traffic, in the event that any train containing CSXT Joint Use Traffic operated by CSXT over the Albany – Saratoga Springs Segment pursuant to this Agreement is subject to the chain of custody requirements set forth at 49 C.F.R. § 1580, or other security regulations issued from time to time by the Department of Homeland Security, Transportation Security Administration or United States Department of Transportation, CSXT shall be responsible for providing all resources necessary to fulfill such requirements. If D&H provides such resources on CSXT's behalf, CSXT shall reimburse D&H for any incremental costs incurred by D&H in complying with such regulations with respect to such train.

(e) CSXT's use of the Albany – Saratoga Springs Segment shall be in common with D&H and any other user of the Albany – Saratoga Springs Segment that D&H may admit to the use of that trackage from time to time, and D&H's right to use the Albany – Saratoga Springs Segment shall not be diminished by this Agreement. D&H shall retain the exclusive right to grant to other persons rights of any nature in the Albany – Saratoga Springs Segment.

(f) D&H shall have exclusive management and control over the movement of trains containing CSXT Joint Use Traffic while operating over the Albany – Saratoga Springs Segment. CSXT in its use of the Albany – Saratoga Springs Segment shall comply in all respects with the safety rules, operating rules and other regulations of D&H, and the movement of trains containing CSXT Joint Use Traffic over the Albany – Saratoga Springs Segment shall at all times be subject to the orders of the transportation officers in charge of D&H (as applicable).

(g) CSXT shall ensure that all locomotives operated by CSXT over the Albany – Saratoga Springs Segment are equipped to communicate with D&H on radio frequencies normally used by D&H in directing train movements on the Albany – Saratoga Springs Segment.

(h) In the event that a train containing CSXT Joint Use Traffic shall be forced to stop on the Albany – Saratoga Springs Segment, and such stoppage is due to insufficient hours of service remaining among CSXT's crew or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train containing CSXT Joint Use Traffic fails to maintain the speed required by D&H on the Albany – Saratoga Springs Segment, or, if in emergencies, crippled or otherwise defective Railcar(s) or locomotives(s) are set out of a train containing CSXT Joint Use Traffic on the Albany – Saratoga Springs Segment, D&H shall have the option to provide any resources or assistance (including but not limited to furnishing motive power or recrewng such train) as may be necessary to haul, help or push such train, Railcar(s) or locomotive(s) or to properly move the disabled equipment off of the Albany – Saratoga Springs Segment, and CSXT shall reimburse D&H for the cost of rendering any such assistance.

(i) CSXT shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated by CSXT over the Albany – Saratoga Springs Segment. CSXT shall indemnify, protect, defend, and save harmless D&H and its Affiliates, and their respective directors, officers, agents and employees, from and against all fines and penalties imposed upon D&H or its Affiliates, or their respective directors, officers, agents and employees, under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CSXT to comply with its obligations under this Section 3.04(i), provided, however, that responsibility for any Loss and Damage and/or Environmental Damage resulting from such failure by CSXT shall be determined in the manner prescribed by Section 13.

(j) CSXT shall make such arrangements with D&H as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Albany – Saratoga Springs Segment qualified for operation thereover. D&H shall provide reasonable cooperation and assistance in the qualification of CSXT operating (train and engine service) crews for service over the Albany-Saratoga Springs Segment as soon as the date such crews and D&H personnel are available and reasonably in advance of the Commencement Date. CSXT shall pay to D&H, upon receipt of bills therefore, any cost incurred by D&H in connection with the qualification of such employees of CSXT, as well as the cost of pilots furnished by D&H until such time as such CSXT employees are deemed by the appropriate examining officer of D&H to be properly qualified for operation as herein contemplated; provided, however, that there shall be no charge for CSXT employees who qualify for operation over the Albany – Saratoga Springs Segment by accompanying D&H crews on regular D&H trains operating between Albany and Saratoga Springs, NY. While qualifying CSXT operating crews for such service, except on regular D&H trains operating between Albany and Saratoga Springs, NY, any D&H personnel, including pilots, shall be considered CSXT employees for purposes of Section 13. CSXT supervisory personnel who have been qualified to operate over the Albany-Saratoga Springs Segment by an appropriate examining officer of D&H may qualify other CSXT employees for operation of trains over the Albany-Saratoga Springs Segment.

(k) If any employee (other than an officer) of CSXT shall neglect, refuse or fail to abide by the instructions and restrictions governing the operation on or along the Albany –

Saratoga Springs Segment or the associated D&H property, D&H shall so notify CSXT. D&H shall have the right to require CSXT promptly to withhold any CSXT employees from service over the Albany – Saratoga Springs Segment pending the results of a formal investigation of the alleged neglect, refusal or failure. After the notice is given to CSXT, CSXT and D&H shall promptly hold a joint investigation, in which each of the Parties shall bear the expenses of its own employees and witnesses. Notice of such investigation to CSXT employees shall be given by CSXT officers. The investigation shall be conducted in accordance with any applicable terms and conditions of schedule agreements between CSXT and its employees. If the result of such investigation warrants, such CSXT employee shall, upon written request by D&H, be restricted by CSXT from service on the Albany – Saratoga Springs Segment, and CSXT shall release and indemnify D&H from and against any and all claims and expenses because of such withdrawal.

SECTION 4

MAINTENANCE AND CAPITAL IMPROVEMENTS

4.01. Maintenance of Joint Use Lines

(a) D&H shall maintain, repair and renew (or cause to be maintained, repaired or renewed) the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment. D&H shall keep and maintain the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment in reasonably good condition for the use herein contemplated, but D&H does not guarantee the condition of the Albany – Saratoga Springs Segment or the Saratoga Springs – Rouses Point Segment, or that operations thereover will not be interrupted. D&H shall take all reasonable steps to ensure that any interruptions are kept to a minimum.

(b) CSXT shall maintain, repair and renew (or cause to be maintained, repaired or renewed) the Albany – Fresh Pond Segment. CSXT shall keep and maintain the Albany – Fresh Pond Segment in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of the Albany – Fresh Pond Segment, or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions are kept to a minimum.

4.02. Construction and Maintenance of Connections

Existing connections or facilities that are jointly used by the Parties hereto to access the Albany – Saratoga Springs Segment shall continue to be maintained, repaired and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair and renewal under current applicable agreements.

4.03. Additions, Retirements and Alterations

(a) D&H from time to time and at its sole cost and expense may make changes in, additions and betterments to or retirements from the Albany – Saratoga Springs Segment and/or the Saratoga Springs – Rouses Point Segment as D&H shall, in its sole judgment, deem necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body

having jurisdiction. Such additions and betterments shall become a part of, and such retirements shall be excluded from, the Albany – Saratoga Springs Segment or the Saratoga Springs – Rouses Point Segment (as applicable).

(b) CSXT from time to time and at its sole cost and expense may make changes in, additions and betterments to or retirements from the Albany – Fresh Pond Segment as CSXT shall, in its sole judgment, deem necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of, and such retirements shall be excluded from, the Albany – Fresh Pond Segment.

4.04. Service Improvements

(a) If, during the Term, CSXT's traffic between Albany and Rouses Point increases such that the volume of CSXT Joint Use Traffic cannot be handled in the maximum number of trains prescribed by Section 2.04(h), CSXT may from time to time request that D&H permit the movement of trains in excess of the Maximum Volume Restrictions. D&H shall consider such request(s) in light of its own existing and future traffic volumes and required reserve capacity, and may, in its sole discretion, permit the movement of additional trains containing CSXT Joint Use Traffic. The grant of such permission by D&H in response to a request by CSXT shall not be construed as a waiver of Section 2.04(h) with respect to any future trains containing CSXT Joint Use Traffic.

(b) If D&H determines, in its sole judgment, that facility changes, additions or betterments to the Albany – Saratoga Springs Segment and/or the Saratoga Springs – Rouses Point Segment, or additional above rail resources (collectively, "Service Improvements") are necessary to accommodate the operation of additional trains containing CSXT Joint Use Traffic, D&H shall advise CSXT of the required Service Improvements and the number of additional trains containing CSXT Joint Use Traffic that would be permitted if such Service Improvements were made. If CSXT desires that such Service Improvements be made, CSXT shall request in writing that D&H make such Service Improvements at CSXT's sole cost and expense. If so requested by CSXT, D&H shall use its commercially reasonable judgment to construct or provide the Service Improvements. Upon the completion of such Service Improvements and payment therefore by CSXT, the Maximum Volume Restrictions set forth in Section 2.04(h) shall be adjusted to include the number of additional trains that D&H specified would be permitted by such Service Improvements. Any Service Improvements constructed on or along the Albany – Saratoga Springs Segment and/or the Saratoga Springs – Rouses Point Segment pursuant to this Section 4.04(b) shall become the sole property of D&H without compensation to CSXT.

SECTION 5 CAR ACCOUNTING AND CAR HIRE

5.01. CSXT Joint Use Traffic

D&H shall not be entitled to any line haul revenue in connection with the movement of CSXT Joint Use Traffic over the Albany – Saratoga Springs Segment and the Saratoga Springs –

Rouses Point Segment, nor shall D&H participate in the routing of, or appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of CSXT Joint Use Traffic over the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment. As between D&H and CSXT, CSXT shall be responsible for all mileage and car hire charges accruing on CSXT Joint Use Traffic moving over the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment, and CSXT shall report and pay, or arrange to have reported and paid, all appropriate allowances and charges directly to the owner(s) of Railcars containing such CSXT Joint Use Traffic. The delivery of CSXT Joint Use Traffic by CSXT to D&H or by D&H to CSXT (as applicable) pursuant to this Agreement shall not be deemed the interchange of rail traffic within the meaning of the Interchange Rules.

5.02. D&H Joint Use Traffic

CSXT shall not be entitled to any line haul revenue in connection with the movement of D&H Joint Use Traffic over the Albany – Fresh Pond Segment, nor shall CSXT participate in the routing of, or appear in tariffs, waybills or other shipping documents as a participating carrier in connection with, the movement of D&H Joint Use Traffic over the Albany – Fresh Pond Segment. As between D&H and CSXT, D&H shall be responsible for all mileage and car hire charges accruing on D&H Joint Use Traffic moving over the Albany – Fresh Pond Segment, and D&H shall report and pay, or arrange to have reported and paid, all appropriate allowances and charges directly to the owner(s) of Railcars containing such D&H Joint Use Traffic. The delivery of D&H Joint Use Traffic by D&H to CSXT or by CSXT to D&H (as applicable) pursuant to this Agreement shall not be deemed the interchange of rail traffic within the meaning of the Interchange Rules.

**SECTION 6
CAR INFORMATION AND CLEARANCES**

6.01. Exchange of Railcar Information

The Parties shall provide or cause to be provided to one another, via EDI 418 transmission (or by such other means as may be mutually agreed by the Parties), information necessary for the further handling and movement of Joint Use Traffic delivered by one Party to the other Party at Rouses Point Junction, NY, Saratoga Springs Yard, Kenwood Yard, Oak Point Yard or Fresh Pond, NY (as applicable). For northbound trains containing CSXT Joint Use Traffic handled by D&H over the Saratoga Springs – Rouses Point Segment, CSXT shall provide or cause to be provided such information at least three (3) hours prior to the departure of such trains from CSXT's Selkirk Yard. Upon receipt of such transmission, D&H will call a crew to operate the train. The information included in such transmissions shall include, for each car:

- (1) Car initial and number.
- (2) Loaded or empty.
- (3) All hazardous materials information as required by the DOT Hazardous Material Regulations, Title 49 of the Code of Federal Regulations. Such documentation shall include the proper DOT

shipping destination for each car loaded with hazardous materials, or containing hazardous material residue.

- (4) Car length and, for each car in excess of ninety-six (96) feet, the number of axles.
- (5) Such other information as Parties may agree to be necessary or convenient for the safe and efficient exchange and further movement of such cars.

6.02. Clearances

(a) CSXT and D&H each shall provide to the other Party blanket clearance for all Joint Use Traffic operating via their respective lines that do not contain Dimensional Loads.

(b) The Parties agree that, prior to the movement of any Dimensional Load tendered by either Party for movement over all or a portion of the Joint Use Lines, the tendering Party shall first notify the receiving Party in writing (including electronic mail), giving all pertinent physical facts, and request permission for such movement. The receiving Party shall respond promptly to a request for permission to move a Dimensional Load. If such a request is denied, the receiving Party shall specifically identify the physical facts or other reason for denial that would interfere with a planned move. If such a request is denied, the receiving Party shall not allow the movement of a load with the same or substantially similar physical characteristics over the same segment of the Joint Use Lines in a train of either Party unless the requesting Party receives prior notice that the limiting clearance or other reason for denial has been removed. It is understood between the Parties that Dimensional Loads that require special handling or special train movements are not covered by this Agreement.

SECTION 7 REPAIRS TO CARS, LOCOMOTIVES AND EQUIPMENT

Either Party may arrange for repairs to locomotives, rolling stock, or lading moving in the account of the other Party over the Joint Use Lines of the first Party, subject to the requirements outlined in this Section 7.

7.01. Repairs to Railcars

Either Party may make repairs to the other Party's Railcars (but not locomotives, repairs to which shall be governed by Section 7.04), and adjustments to or transfers of lading from bad ordered, defective or overloaded Railcars as in one Party's judgment may be necessary to move such other Party's Railcars safely. The repairing Party shall, at the expense of the other Party, furnish required labor and material, and perform light repairs to make such bad ordered equipment safe for movement. The Party performing such repairs shall be reimbursed by the other Party for the cost of such work at rates prescribed in, and submitted pursuant to, the AAR Interchange Rules governing freight car repair.

7.02. Return of Bad Ordered Railcars

If a Party bad orders a Railcar of the other Party while in its possession and the Party must set it out, such Railcar, after being repaired, shall be returned or delivered to the other Party. The employees and equipment of the repairing Party while in any manner so engaged or while en route to or returning from such repair assignment shall be considered the employees and equipment of the other Party.

7.03. Billing for Repairs to Railcars

Billing by one Party for repairs to the Railcars of the other Party shall be in accordance with the Interchange Rules in effect as of the date of performance of the repairs. The repairing Party shall prepare and submit billing directly to and collect from other Party for handling line responsibility items as determined under said Interchange Rules. The repairing Party shall also prepare and submit billing directly to and collect from the car owners for their car owner responsibility items as determined under said Interchange Rules. The repairing Party shall submit billing to and collect from the other Party any charges for repair to Railcars that are car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor.

7.04. Repairs to Locomotives

If one or more of either Party's locomotives engaged in the movement of Joint Use Traffic require(s) repair while on the lines of the other Party, the repairing Party may, without the other Party's prior consent, perform light repairs to such other Party's locomotives, not to exceed { } The cost of such repairs will be invoiced by the repairing Party to, and shall be paid by, the other Party. If one or more of a Party's locomotives require(s) repairs exceeding { }, the repairing Party shall obtain the approval of the appropriate mechanical officer of the other Party prior to making such repairs. If the Party declines to approve such repairs, the repairing Party shall return the subject Party's locomotive(s) to the other Party. The { } threshold for obtaining consent for repairs pursuant to this Section 7.04 shall be adjusted in the manner set forth in Section 9.05(c) of this Agreement.

7.05. Wrecking Service

Whenever circumstances require wrecking service or wrecking train service in connection with either Party's use of the Joint Use Lines, then the Party responsible for management and operation of the applicable segment of the Joint Use Lines shall arrange for such services to be performed as promptly as reasonably possible, and the cost thereof shall be allocated as between the Parties in accordance with the terms of Section 13.

7.06. Repairs to Third Party Railcars and Equipment

If it becomes necessary to make repairs to or adjust or transfer the lading of crippled or defective Railcars or equipment of a third party operating over a segment of the Joint Use Lines in order to move such defective Railcars or equipment the Joint Use Lines, such work shall be

done by the Party responsible for management and control of the applicable segment of the Joint Use Lines at that Party's sole cost and expense.

SECTION 8 SERVICE STANDARDS

8.01. Service Standards

(a) In handling Joint Use Traffic for the account of the other Party, each Party shall accord the other Party's Joint Use Traffic substantially the same level of performance and service as the Party's own traffic and/or traffic of a third party operating on the subject segment of the Joint Use Lines. The trains, locomotives, Railcars and equipment of either Party, and any other present or future user of a segment of the Joint Use Lines, shall be operated without prejudice or partiality to either Party and in such a manner as shall afford the most economical and efficient manner of movement of all traffic.

(b) Appendix A – Initial Trip Plan, attached hereto and made part of this Agreement, sets forth CSXT's service plan for the Albany – Fresh Pond Segment as of the time of this Agreement's implementation. Appendix B attached hereto and made part of this Agreement, sets forth D&H's service plan for the Saratoga Springs –Rouses Point Segment as of the time of this Agreement's implementation. CSXT and D&H each shall make commercially reasonable best efforts to provide service for D&H Joint Use Traffic and CSXT Joint Use Traffic (as applicable) in compliance with Appendix A and Appendix B, respectively.

(c) Notwithstanding any other provision of this Agreement, CSXT and D&H each acknowledge and agree that there are no service guarantees made by either Party for services provided pursuant to this Agreement. Neither Party shall make any claim for damages or otherwise against the other Party on account of such other Party's failure to provide service for Joint Use Traffic in compliance with the service standards set forth in this Section 8.

8.02. Service Standards Committee

(a) CSXT and D&H shall establish a Service Standards Committee, which shall: (i) monitor, and periodically review and adjust, service and schedules and all related operating matters as necessary for satisfactory performance by the Parties in providing service over the Joint Use Lines; (ii) carry out such duties as may be assigned to it in this Agreement, (iii) review, and adjust as required from time to time, schedules for trains carrying either Party's Railcars; and (iv) address any other operating issues that may arise in connection with this Agreement, which shall include but are not limited to arrival and departure times of D&H Joint Use Traffic at Kenwood Yard and trains containing CSXT Joint Use Traffic at Saratoga Springs Yard. Meetings of the Service Standards Committee may be convened by either Party as required to fulfill its duties under this Agreement. The Service Standards Committee may meet by telephone, videoconferencing, or at such location as the Parties may agree.

(b) The schedule for the operation of trains containing CSXT Joint Use Traffic and/or D&H Joint Use Traffic (as applicable) shall be determined from time to time by the Service Standards Committee. Each of CSXT and D&H shall have the right to modify the

schedules of trains containing CSXT Joint Use Traffic and/or D&H Joint Use Traffic (as applicable), with the approval of the Service Standards Committee. CSXT or D&H (as applicable) shall provide the Service Standards Committee seven (7) days prior written notice of changes in service schedules, except in the case of train annulments and, subject to the Maximum Volume Restrictions set forth in Section 2.04(h), extra trains necessitated by sudden surges in the volume of CSXT Joint Use Traffic or D&H Joint Use Traffic requiring less than seven (7) days notice. The Service Standards Committee shall promptly review all proposed schedule changes and promptly advise as to the acceptability of the proposed scheduled changes. CSXT and D&H each shall make commercially reasonable efforts to provide service to the other Party in compliance with the schedules established pursuant to this Section 8.02(b).

(c) In the event the Service Standards Committee fails to reach agreement with respect to any issue submitted to it pursuant to this Section 8.02 within sixty (60) days, then the Parties agree that such issue shall be resolved in accordance with the following procedures:

- (1) Either Party may escalate said dispute by referring the issue to the Parties' applicable General Managers for resolution.
- (2) In the event the General Managers are unable to resolve the issue within fifteen (15) days, either Party may escalate said dispute by referring the issue to the Parties' applicable vice-presidents for resolution.
- (3) If the vice-presidents referred to in Section 8.02(c)(2) are unable to resolve the dispute within fifteen (15) days from the receipt thereof, then either Party may seek relief under the arbitration provisions of Section 19 of this Agreement.

8.03. Service Interruptions

(a) If rail service on the Albany – Saratoga Springs Segment, the Saratoga Springs – Rouses Point Segment or the Albany – Fresh Pond Segment (as applicable) is interrupted for more than twenty-four (24) consecutive hours on account of a derailment, line outage or other interruption of service (an "Outage Period"), then the respective network operations managers of CSXT and D&H shall consult within twelve (12) hours after the first twenty-four (24) hours of the Outage Period to evaluate alternatives for handling any resulting backlog of trains containing CSXT Joint Use Traffic or D&H Joint Use Traffic (as applicable) following resolution of the circumstances that gave rise to such interruption of rail service (the "Resolution Period"). The Parties shall endeavor to clear any resulting backlog of trains as soon as feasible, taking into account any backlog of other CSXT, D&H and third party trains similarly affected by such interruption in rail service. Where detour routes are available, CSXT and D&H will use commercially reasonable efforts to obtain permission to reroute trains containing CSXT Joint Use Traffic or D&H Joint Use Traffic (as applicable) over such detour routes. During the Resolution Period, (i) the Maximum Volume Restrictions set forth in Section 2.04(h) shall be relaxed; and (ii) CSXT shall move D&H Joint Use Traffic in regularly scheduled or unscheduled CSXT trains over the Albany – Fresh Pond Segment, in each case as necessary to permit the most efficient and expeditious clearing of any backlog of trains containing CSXT Joint Use

Traffic or D&H Joint Use Traffic (as applicable) within a reasonable time determined by the Parties. During the Resolution Period, trains containing CSXT Joint Use Traffic and D&H Joint Use Traffic shall be accorded substantially the same priority and level of service. The Maximum Volume Restrictions shall be immediately reinstated once any backlog of trains containing CSXT Joint Use Traffic is cleared.

(b) If trains containing CSXT Joint Use Traffic or D&H Joint Use Traffic (as applicable) are detoured or rerouted over alternate rail lines during the Resolution Period, CSXT or D&H (as applicable) shall compensate the other Party for any incremental costs (including additional crew costs) incurred by such Party in handling such detoured CSXT Joint Use Traffic or D&H Joint Use Traffic (as applicable).

SECTION 9 COMPENSATION

The compensation to be paid by the Parties for their use of the Joint Use Lines, and the handling of Joint Use Traffic in the account of one Party by the other Party over segments of the Joint Use Lines, shall be as follows:

9.01. Saratoga Springs – Rouses Point Segment

In consideration for the handling by D&H of trains containing CSXT Joint Use Traffic over the Saratoga Springs – Rouses Point Segment, CSXT agrees to pay D&H {

(a)

(1)

(2)

(b)

}

{

(c)

(1)

(2)

(d)

}

{

(1)

(2)

(e)

}

9.02. Albany - Saratoga Springs Segment

(a) In consideration for its joint use of the Albany – Saratoga Springs Segment, CSXT agrees to pay D&H {

(b)

.}

9.03. Albany – Fresh Pond Segment

(a) In consideration for the handling by CSXT of D&H Joint Use Traffic over the Albany – Fresh Pond Segment, D&H agrees to pay CSXT {

:

(1)

(2)

(b)

(c)

.}

(d) D&H shall be responsible for paying directly to MNCR, AMTRAK or the New York State Department of Transportation any compensation for the movement of D&H Joint Use Traffic pursuant to agreements under which D&H currently has access, trackage or

similar rights to use portions of the Albany – Fresh Pond Segment between Schenectady, NY and New York City, NY over rail lines owned by those entities. D&H agrees to indemnify and hold harmless CSXT against any claims by MNCR, AMTRAK or the New York State Department of Transportation for any compensation due under those agreements.

(e) {

}

9.04. Payment Procedures

The following provisions shall apply to the compensation provisions set forth in each of Sections 9.01, 9.02 and 9.03:

(a) In computing the compensation payable by one Party to the other Party pursuant to this Section 9, Railcars that exceed ninety-six (96) feet in length shall be counted as one (1) Railcar for each four (4) axles. Each locomotive unit shall be counted as one Railcar for purposes of this Section 9 regardless of length and number of axles. EOTD shall not be counted as a Railcar or other item for purposes of compensation.

(b) Except to the extent otherwise expressly provided in this Agreement, any and all expenses incurred by either Party hereto in connection with its performance under this Agreement and the services contemplated hereby shall be borne by the Party incurring such expenses.

9.05. Annual Adjustment

The CSXT Current Charge and the D&H Current Charge shall be adjusted annually in the following manner:

(a) {

(1)

}

{

(2)

(3)

}

(b) The first annual adjustment to the CSXT Current Charge, the D&H Current Charge and the Oak Point Industry Switch Charge shall be computed by calculating the percentage of increase or decrease in the final index for the calendar year ending December 31, 2010, as related to the final index for the Base Calendar Year, and applying that percentage to the relevant charges specified in Section 9.01(a), Section 9.01(b), Section 9.02(a), Section 9.03(a) or Section 9.03(b), as applicable. Subsequent annual adjustments will be computed by calculating the percentage of increase or decrease in the final index published for the calendar year immediately preceding the year in which the adjustment is to be applied, as related to the final index published for the Base Calendar Year, and applying that percentage to the relevant charge specified in Section 9.01(a), Section 9.01(b), Section 9.02(a), Section 9.03(a) or Section 9.03(b), as applicable. By way of example, assuming "A," as previously defined, for the Base Calendar Year; "B," as previously defined, for the calendar year immediately preceding the year

in which the adjustment is to be applied; "C" to be the relevant CSXT Current Charge, D&H Current Charge or Oak Point Industry Switch Charge (as applicable); and "D" to be the percentage, carried out to three decimal places, of increase or decrease, the adjusted Current Charge to be applied on and after July 1, 2011 would be determined by the following formula:

- (1) $(B - A) / A = D$
- (2) $C \times (1 + D) = \text{adjusted Current Charge, effective July 1, 2011}$
(rounded to the third decimal place)
- (3) If the base for the "Annual Indices of Charge-out Prices and Wage Rates" issued by the AAR is changed from the year 1977, an appropriate revision shall be made in the base (established as herein provided) for the calendar year 1977. If the AAR or any successor organization discontinues publication of the "Annual Indices of Charge-out Prices and Wage Rates," an equitable substitute for determining the annual percentage of increase or decrease shall be negotiated by the Parties. In the event the Parties are unable to reach agreement on a suitable replacement for the AAR Index provided above within six (6) calendar months after the discontinuance of said publication then, either Party may submit the issue to binding arbitration in the manner prescribed in Section 19.

(c) The amounts payable by one Party to the other Party pursuant to Section 7.04, Section 9.01(b), Section 9.01(d), Section 9.01(e), Section 9.02(b), and Section 13.13) shall be adjusted annually in the manner prescribed by Section 9.05(a)(1).

SECTION 10 TERM AND TERMINATION

10.01. Effective Date and Commencement Date

(a) This Agreement shall become effective (the "Effective Date") on the date upon which it is executed by both Parties. However, operations and the movement of Joint Use Traffic pursuant to this Agreement shall not commence (the "Commencement Date") until a date mutually agreed in writing between CSXT and D&H, which shall not occur until the later of (i) the effective date of any required STB and/or other governmental approval or exemption for the transactions contemplated by this Agreement, (ii) the date upon which CSXT and D&H shall have completed any arrangements with CN necessary for the movement of Joint Use Traffic beyond the United States – Canada border; and (iii) such later date provided by Section 10.01(b).

(b) The Commencement Date may be deferred by either Party, in its sole discretion, under the following circumstances:

- (1) If any STB decision (i) denies (in whole or in part) approval to the transactions contemplated by this Agreement or (ii) approves such

transactions subject to any condition (including employee protective conditions that subject either Party to substantive or procedural obligations materially greater than those customarily imposed under the Board's *Norfolk & Western* conditions) that would, in such Party's sole judgment, materially reduce the benefits of the transaction for such Party, such Party may, in its sole discretion, by written notice provided to the other Party at least ten (10) days in advance of any scheduled Commencement Date, defer the Commencement Date pending completion of administrative reconsideration and/or judicial review proceedings with respect to such Board decision.

- (2) Either Party may, in its sole discretion and by written notice provided to the other Party at least ten (10) days in advance of any scheduled Commencement Date, defer the Commencement Date in the event of a material change in the law or of any statute that, in the opinion of such Party, (i) imposes additional governmental approval requirements with respect to the transactions contemplated by this Agreement, (ii) renders the transactions contemplated by this Agreement unlawful in any material respect, or (iii) adversely impacts the anticipated or expected benefits of this Agreement for such Party.
- (3) Either Party may, in its sole discretion and by written notice provided to the other Party at least ten (10) days in advance of any scheduled Commencement Date, defer the Commencement Date until such time as any required implementing agreements pursuant to employee protective conditions imposed on the transaction have been reached through negotiations and/or arbitration and, if any such agreement is imposed by an arbitration award, until such award has become final and is no longer subject to administrative or judicial review.
- (4) Either Party may, in its sole discretion and by written notice provided to the other Party, defer the Commencement Date until such time as any claim, litigation or actual or threatened work stoppage by one or more unions representing employees of that Party concerning the Agreement is resolved to such Party's satisfaction.

(c) In the event that the Commencement Date is deferred by either Party pursuant to Section 10.01(b), the Commencement Date may be reset only by mutual agreement in writing of the Parties.

10.02. Term and Renewal

(a) Except as otherwise provided in Section 10.04 below, this Agreement shall remain in full force and effect for a term of twenty (20) years from the Commencement Date (the "Term").

(b) Subject to the terms and conditions hereinafter set forth, either Party shall have the option to renew this Agreement for one (1) additional twenty (20) year term (the "Renewal Term") by giving notice of such Party's election to do so to the other Party not more than twelve (12) months and not less than six (6) months prior to the expiration of the Term of this Agreement.

10.03. Renegotiation

In the event that railroad operations, technology, changes in laws or regulations, or other events, including any economic or commercial event(s) that creates, in the view of either Party to this Agreement, a disparity such that the terms and conditions of this Agreement over time no longer reflect the intention of the Parties in a substantial and material way, and such disparity has a material and substantial adverse effect on said Party, that Party may give notice of such to the other Party, who shall negotiate in good faith any modification of this Agreement that may be required to address and possibly remove said perceived disparity. Should the Parties fail to reach agreement with regard to such perceived disparity, the concerned Party may invoke mediation or other methods of non-binding alternative dispute resolution, in which the other Party agrees to participate in good faith.

10.04. Termination

(a) This Agreement may be terminated, and there shall thereafter be no liability of either Party to the other Party hereunder, as follows:

- (1) At any time, by the mutual written agreement of the Parties;
- (2) By either Party, by written notice to the other Party, within ten (10) days of any STB decision (i) denying (in whole or in part) approval to the transactions contemplated by this Agreement or (ii) approving such transactions subject to any condition (including employee protective conditions that subject either Party to substantive or procedural obligations materially greater than those customarily imposed under the Board's *Norfolk & Western* conditions) that would, in such Party's sole judgment, materially reduce the benefits of the transaction for such Party.
- (3) By either Party, by written notice to the other Party within thirty (30) days after the issuance of (i) an arbitration award imposing an implementing agreement pursuant to employee protective conditions imposed on the transaction, or (ii) an administrative or judicial decision on review of such implementing agreement, if such Party decides that the terms of such implementing agreement

or administrative or judicial decision are, in such Party's sole discretion, unacceptable to such Party.

- (4) By either Party, by written notice to the other Party, if the Commencement Date does not occur on or before December 31, 2011.
- (5) If, at any time prior to the Commencement Date, there occurs a material change in the law or of any statute that, in the opinion of either Party, renders the transactions contemplated by this Agreement unlawful in any material respect, such Party shall give written notice thereof to the other Party. The Parties shall thereafter promptly confer for the purpose of agreeing to such modifications to this Agreement (or such other agreement(s)) as their respective legal counsel may deem appropriate in order to replace any provisions of this Agreement that are rendered unlawful in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects. The provisions of this Agreement, other than those determined to be unlawful as a result of such change in the law or of any statute, shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In the event that the Parties are not able to agree upon such modifications to this Agreement (or such other agreement(s)) within one hundred eighty (180) days after such written notice, or if the Parties' respective counsel mutually conclude that this Agreement cannot be modified (or replaced with other agreement(s)) in a manner that produces a result which is substantially equivalent to the terms of this Agreement, then this Agreement shall terminate.
- (6) By either CSXT or D&H (as applicable), upon a change of control of the other Party, by written notice to such other Party. If either CSXT or D&H becomes a party to a change of control transaction, it shall notify the other Party thereof in writing within seven (7) business days. If CSXT or D&H (as applicable) fails to give written notice of termination pursuant to this Section 10.04(a)(6) within thirty (30) days of being notified of the change of control, D&H or CSXT (as applicable) shall be deemed to have consented to the change of control and shall waive its right to terminate under this Section 10.04(a)(6). If D&H or CSXT (as applicable), gives such notice of termination within said thirty (30) day period, this Agreement shall terminate forty-five (45) days after the date CSXT or D&H (as applicable) receives such notice. During such forty-five (45) day period, the Parties shall negotiate in good faith to reach agreement resolving the notice of intent to terminate. For purposes of this Section 10.04(a)(6), "change of control" shall mean (i) the failure of the CPR or CSX Corporation at any time to

directly own beneficially, and of record, on a fully diluted basis more than 50% of the combined voting power of all the outstanding voting securities of D&H or CSXT (as applicable), or (ii) the sale of all or substantially all of the railroad operating assets or business of D&H or CSXT (as applicable), the merger or consolidation of D&H or CSXT into a firm, corporation, or legal entity not controlled by CPR or CSX (as applicable), or a reorganization of D&H or CSXT into an entity that is not controlled by CPR or CSX (as applicable).

- (7) If, upon expiration of the Term, neither Party has exercised its option to renew this Agreement pursuant to Section 10.02(b), then this Agreement shall automatically terminate as of such expiration date without the requirement of any written notice by one Party to the other Party.
- (8) In the event that CSXT or D&H (as applicable) consummates an abandonment or discontinuance of service over the Albany – Saratoga Springs Segment, the Saratoga Springs – Rouses Point Segment and/or the Albany – Fresh Pond Segment (as applicable), this Agreement shall automatically terminate as of the effective date of such abandonment or discontinuance of service.
- (9) By either Party, by written notice provided to the other Party, if any claim, litigation or actual or threatened work stoppage by one or more unions representing employees of that Party concerning the Agreement has not been resolved to such Party's satisfaction on or before the Commencement Date (including a previously scheduled Commencement Date that has been deferred pursuant to Section 10.01(b)).
- (10) By either Party, upon ten (10) days written notice to the other Party, pursuant to the procedures governing events of default set forth in Section 16.

(b) In the event of termination pursuant to this Section 10.04, the "Termination Date" shall be the date specified by the party giving the written notice prescribed by Section 10.04(a).

(c) In addition to the right to terminate this Agreement under the circumstances set forth in Section 10.04(a), CSXT shall have the option, in its sole discretion, to discontinue its joint use of the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment at any time, upon six (6) months prior written notice to D&H of CSXT's intent to discontinue such joint use; provided, however, that CSXT may not, without D&H's prior written consent (which D&H may withhold in its sole discretion) discontinue its joint use of the Albany – Saratoga Springs Segment while continuing to exercise its right of joint use with respect to the Saratoga Springs – Rouses Point Segment (or vice versa).

(d) In addition to the right to terminate this Agreement under the circumstances set forth in Section 10.04(a), D&H shall have the option, in its sole discretion, to discontinue its joint use of the Albany – Fresh Pond Segment at any time, upon six (6) months prior written notice to CSXT of D&H's intent to discontinue such joint use. In the event that D&H exercises the option granted to it by this Section 10.04(d), D&H shall have the right immediately to reinstitute operations pursuant to the D&H – CSXT New York Trackage Rights Agreement and the Oak Point Switching Agreement.

(e) Termination of this Agreement pursuant to this Section 10.04 shall not relieve or release either Party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to such termination.

(f) If termination of this Agreement, or cessation of either Party's operations (or provision of services for the account of the other Party) over the Joint Use Lines, requires the prior approval or authorization of the STB or any other Governmental Authority, the Parties shall promptly cooperate in making any and all filings, and taking any and all other actions, necessary to secure such approval or authorization. Each of CSXT and D&H hereby covenants and agrees that it will not oppose or object to the termination of this Agreement or of its operations (or provision of services for the account of the other Party) over the Joint Use Lines in the event that this Agreement is terminated pursuant to Section 10.04(a), or either Party exercises its option pursuant to Section 10.04(c) or (d) (as applicable). Should either Party fail to make any required filing within thirty (30) days of the Termination Date, such Party hereby expressly authorizes the other Party to make such a filing on the first Party's behalf, and such first Party reimburse other Party for any costs associated with such filing, including attorney and filing fees.

(g) In the event that the STB or any other governmental or regulatory authority imposes any labor protection for the benefit of carrier employees in connection with the termination of this Agreement pursuant to Section 10.04(a) or the discontinuance by either Party of its joint use of the Joint Use Lines pursuant to Section 10.04(c) or Section 10.04(d) (as applicable),{

}

SECTION 11 CUSTOMS INSPECTIONS

11.01. Customs Documentation

(a) CSXT will perform or cause to be performed the presentation of all required documentation for trains containing CSXT Joint Use Traffic operated by D&H (in either direction) over the Saratoga Springs – Rouses Point Segment to clear both Canada Border Services Agency (“CBSA”) and United States Customs and Border Protection (“USCBP”). Except as provided in Section 11.01(b), CSXT will be responsible for all fees, charges, interest and penalties imposed by any government agency(ies) resulting from the failure of CSXT to provide sufficient and/or accurate documentation in a timely manner for trains containing CSXT Joint Use Traffic operated by D&H over the Saratoga Springs – Rouses Point Segment.

(b) CSXT shall have no responsibility for any fees, charges, interest and penalties imposed by either the CBSA or USCBP solely on account of D&H’s failure to report to CSXT any alteration made to a train containing CSXT Joint Use Traffic operated by D&H over the Saratoga Springs – Rouses Point Segment subsequent to its departure from Saratoga Springs Yard or Rouses Point Junction (as applicable) that renders required documentation previously provided by CSXT inaccurate. D&H and/or CPR shall report any such alteration to a train containing CSXT Joint Use Traffic operated by D&H over the Saratoga Springs – Rouses Point Segment in an appropriate format and in sufficient time to afford CSXT the ability to provide updated and accurate documentation to the CBSA or USCBP in accordance with each agency’s reporting requirements.

SECTION 12 COMPLIANCE WITH RULES, REGULATIONS AND LAWS

Each Party hereto shall comply with all applicable federal, state and local laws, rules, regulations and orders promulgated by any government or governmental agency that relate to the provision of rail service under this Agreement. If any fine, penalty, liability, cost or charge is imposed or assessed on or against either Party hereto by reason of the other Party’s non-compliance with any such laws, rules, regulations or orders, such non-complying Party shall reimburse and indemnify the other Party for or on account of any such fine, penalty, liability, cost, or charge, and all reasonable expenses and reasonable attorney’s fees incurred in connection therewith, and, to the extent feasible, such non-complying Party shall defend the interests of that other Party in any related legal proceeding free of cost, charge or expense to that other Party.

SECTION 13 LIABILITY

As between the Parties hereto, responsibility for any Loss or Damage and/or Environmental Damage shall be allocated as follows, without regard to considerations of fault or negligence (except as otherwise provided in Section 13.05, Section 13.06, and Section 13.07 hereof):

13.01. Definitions

For purposes of this Section 13, the following words shall have the meanings set forth in this Section 13.01:

(a) "Foreign Railroad" shall mean a railroad, including any passenger or commuter railroad, that is not a party to this Agreement, except that an Affiliate of D&H shall not be considered a Foreign Railroad but shall be considered D&H when the Railcars of the D&H Affiliate are considered D&H Joint Use Traffic.

(b) "Equipment" shall mean and be confined to cabooses, hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon. "D&H Equipment" shall mean Equipment operated by or in the account of D&H and its Affiliates and "CSXT Equipment" shall mean Equipment operated by or in the account of CSXT.

13.02. Foreign Railroad Railcars and Equipment

(a) For purposes of determining liability for Loss and Damage and Environmental Damage as between the Parties pursuant to this Section 13, any Railcars, trains, locomotives, or Equipment of a Foreign Railroad on the Albany – Fresh Pond Segment shall be considered CSXT Joint Use Traffic.

(b) For purposes of determining liability for Loss and Damage and Environmental Damage as between the Parties pursuant to this Section 13, any Railcars, trains, locomotives, or Equipment of a Foreign Railroad on the Albany – Saratoga Springs Segment and the Saratoga Springs – Rouses Point Segment shall be considered D&H Joint Use Traffic.

13.03. Loss or Damage Involving One Train

If Loss or Damage occurs with only one train being involved, then responsibility for such Loss or Damage, as between CSXT and D&H, shall be allocated in the following manner:

(a) if the train is handling only D&H Joint Use Traffic, all such Loss or Damage shall be borne solely by D&H;

(b) if the train is handling only CSXT Joint Use Traffic, all such Loss or Damage shall be borne solely by CSXT; and

(c) if the train is handling both CSXT Joint Use Traffic and D&H Joint Use Traffic, all such Loss or Damage shall be shared and borne by each of CSXT and D&H in proportion to the number of units of CSXT Joint Use Traffic and D&H Joint Use Traffic, respectively, moving in such train.

13.04. Loss or Damage Involving Multiple Trains

If Loss or Damage occurs involving more than one train, and at least one train is a train containing CSXT Joint Use Traffic, and at least one train is a train containing D&H Joint Use Traffic, then CSXT shall assume responsibility for all CSXT Joint Use Traffic and D&H shall assume responsibility for all D&H Joint Use Traffic moving in such involved trains. In such event, any other Loss or Damage, including without limitation any Loss or Damage to (i) employees or locomotives of the Parties, (ii) third party Railcars and Equipment, (iii) trackage and other property, and (iv) any injury to or death of any other person or persons, so occurring shall (except as otherwise provided in Section 13.05, Section 13.07 and Section 13.07) be allocated between the Parties in the following manner, without regard to considerations of fault or negligence:

(a) First, the total amount of such Loss or Damage shall be allocated equally among the trains involved;

(b) Then, (i) all such Loss or Damage allocated to any train(s) which is (are) handling only D&H Joint Use Traffic shall be borne solely by D&H, (ii) all such Loss or Damage allocated to any train(s) which is (are) handling only CSXT Joint Use Traffic shall be borne solely by CSXT, and (iii) all such Loss or Damage which is allocated to any train(s) handling both CSXT Joint Use Traffic and D&H Joint Use Traffic shall be shared and borne by each of CSXT and D&H in proportion to the number of units of CSXT Joint Use Traffic and D&H Joint Use Traffic, respectively, moving in such train(s).

13.05. Incidents Involving a Release from Railcars or Locomotives

Notwithstanding any provision to the contrary in this Section 13 (except Section 13.06 and Section 13.07), when any Environmental Damage occurs as a result of a release of a substance moving in one or more Railcars and/or locomotives, then, as between themselves, (i) D&H shall be solely responsible for any Environmental Damage which results solely from a substance transported in D&H Joint Use Traffic and/or a D&H locomotive from which there was a release, (ii) CSXT shall be solely responsible for any Environmental Damage which results solely from a substance transported in CSXT Joint Use Traffic and/or a CSXT locomotive from which there was a release, and (iii) responsibility for Environmental Damage which results from one or more substances which was (or were) transported in both D&H Joint Use Traffic (and/or a D&H locomotive) and CSXT Joint Use Traffic (and/or a CSXT locomotive) from which there was a release shall be allocated between the Parties in proportion to the total number of units of CSXT Joint Use Traffic and D&H Joint Use Traffic from which there was a release of Rail Security-Sensitive Material, or alternatively, if such a release does not involve Rail Security-Sensitive Material, in proportion to the total number of units of CSXT Joint Use Traffic (and/or CSXT locomotives) and D&H Joint Use Traffic (and/or D&H locomotives) from which there was such a release. For purposes of this Section 13.05, locomotives supplied by CSXT pursuant to Section 9.01(c)(1) shall be deemed locomotives of CSXT.

13.06. Incidents Involving Gross Negligence and Willful Misconduct

Notwithstanding any provision to the contrary in this Section 13 (except Section 13.07), whenever Loss or Damage occurs with one or more trains being involved, and at least one train is a train containing CSXT Joint Use Traffic, and at least one train is a train containing D&H Joint Use Traffic, and such Loss or Damage is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss or Damage, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss or Damage. The Parties agree that, for purposes of this Section, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

13.07. Incidents Involving Drugs and Alcohol

Notwithstanding any provision of this Section 13 (including without limitation Section 13.05 and Section 13.06) to the contrary, each Party shall assume and bear all responsibility for any Loss or Damage caused solely by acts or omissions of any its employees while under the influence of drugs or alcohol.

13.08. Notice of Claims

If any suit or action shall be brought against any Party for Loss or Damage which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said responsible Party shall be notified in writing by the Party sued, and the Party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay its share of the judgment and the costs and expense incurred in such suit in accordance with the terms of this Section 13.

13.09. Installment Payments to Employees

In every case of death or injury suffered by an employee of CSXT or D&H, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal worker's compensation, occupational disease, employers' liability or other law, and one or more of the Parties under provisions of this Agreement is/are required to pay same or a portion of same in installments over a period of time, said Party or Parties shall not be released from paying any such future installment(s) by reason of the expiration or other termination of this Agreement prior to any of the respective date(s) upon which any such future installments are to be paid.

13.10. Indemnity

Whenever any liability, cost or expense is assumed by or allocated to a Party under this Section 13, that Party shall (i) forever protect, defend, indemnify and save harmless the other Party and its Affiliates, and all of their respective directors, officers, agents, and employees, from

and against that liability, cost and expense, regardless of whether such liability, cost and expense was caused in whole or in part by the fault, failure, negligence, misconduct, malfeasance or misfeasance of the indemnitees or their directors, officers, agents or employees, and (ii) defend such indemnitees against such claims with counsel selected by the responsible Party and reasonably acceptable to the indemnified Party.

13.11. Investigation of Cargo-Related Claims

Each Party shall investigate, adjust and defend all cargo related claims filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709 and 49 U.S.C. Section 10502. The Parties shall be bound by the Freight Claim Rules, Principles and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

13.12. Costs of Investigating, Adjusting and Settling Claims

All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit (other than cargo-related claims made against a Party by a customer whose traffic was moving in the revenue and/or car hire account of such Party) under this Agreement shall be included as costs and expenses in applying the liability provisions of this Section 13; provided, however, that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.

13.13. Settlements

No Party shall settle or compromise any claim, demand, suit or cause of action (other than a cargo-related claim filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709 and 49 U.S.C. Section 10502) for which the other Party has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds{ } .The foregoing amount of { } shall be adjusted annually in accordance with the provisions of Section 9.05(c).

SECTION 14 BILLING AND PAYMENT

14.01. Billing

(a) On or before the 15th day of each calendar month during the term of this Agreement, (i) CSXT shall prepare and deliver to D&H a statement setting forth the number of units of CSXT Joint Use Traffic moved by CSXT over the Albany – Saratoga Springs Segment and/or tendered to D&H at Saratoga Springs and Rouses Point Junction, NY for handling by D&H over the Saratoga Springs – Rouses Point Segment, and (ii) D&H shall prepare and deliver to CSXT a statement setting forth the number of units of D&H Joint Use Traffic tendered to CSXT at Kenwood Yard, Oak Point Yard and Fresh Pond, NY for handling by CSXT over the

Albany – Fresh Pond Segment, in each case during the preceding calendar month (the “Monthly Statement”). The Monthly Statement shall be delivered by each Party to the other Party in electronic format (or such other format as may be mutually agreed by the Parties) to the person(s) designated by CSXT and D&H, respectively, from time to time for receipt of Monthly Statements.

(b) Each Monthly Statement shall contain a detailed list of the Party’s Joint Use Traffic that moved during the subject month, which shall include, separately for each Railcar and locomotive: (1) car initial and number; (2) the points between which such Railcar and/or locomotive was handled by the other Party; (3) whether such Railcar was in excess of ninety-six (96) feet in length; (4) for each Railcar in excess of ninety-six (96) feet in length, the number of axles on such Railcar; (5) associated train symbol for each Railcar and/or locomotive that traveled over the other Party’s Joint Use Lines; (6) the Standard Transportation Commodity Code (“STCC”) for the commodity carried in each loaded Railcar; and (7) any other information relating to such Railcar that the billing Party may reasonably request in connection with accounting for its services.

(c) The Party receiving the Monthly Statement shall prepare and deliver to the other Party an invoice (the “Service Invoice”), computed in accordance with the appropriate Section of this Agreement for the services covered by that Monthly Statement.

(d) Either Party shall have the right, at its own expense, to audit the records of the other Party pertaining to Joint Use Traffic or services provided under this Agreement at any time within one (1) year of the date of the relevant Service Invoice. All such audits shall be conducted at reasonable intervals, locations and times. Each Party agrees that all information disclosed to it or its representatives in connection with such an audit will be held in strictest confidence and will not be disclosed to any third party (other than to an arbitrator in connection with an arbitration conducted pursuant to Section 19 of this Agreement or as required by applicable law). Any adjustment resulting from an audit conducted pursuant to this Section 14.01(d) with respect to which the Parties are in concurrence shall be reflected in a subsequent Service Invoice.

14.02. Payments

(a) All payments called for under this Agreement shall be made by the appropriate Party within forty-five (45) days after receipt of bills, including Service Invoices. Except as otherwise provided in Section 14.02(c), no payment shall be withheld because of any dispute as to the correctness of items in the bills rendered.

(b) Bills rendered for actual cost items chargeable by one Party to the other Party pursuant to this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by one Party at the time any work is performed by that Party for the other Party.

(c) Any dispute regarding the amount of a Service Invoice shall be reconciled between the Parties, and any adjustment resulting from such reconciliation shall be reflected in a subsequent Service Invoice. If a Party disputes any portion of a Service Invoice, it shall

nevertheless pay such Service Invoice in full (unless such dispute involves an amount in excess of fifty percent (50%) of the total amount of such Service Invoice), subject to adjustment upon resolution of the dispute; provided, however, that (1) no exception to any charge in a Service Invoice shall be honored, recognized or considered if filed after the expiration of one (1) year from the date of the Service Invoice, and (2) no invoice shall be rendered more than one (1) year (a) after the last day of the calendar month in which the expense covered thereby is incurred, or (b) in the case of charges disputed as to amount or liability, after the amount owed or liability therefore is established.

SECTION 15 FORCE MAJEURE

15.01. Force Majeure

(a) The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including picketing, strikes or similar work stoppage, riots, floods, accidents, Acts of God, acts or threats of terrorism, and other causes or circumstances beyond the reasonable control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party. In the event that an event of force majeure impairs either Party's ability to fulfill its obligations to the other Party under this Agreement, said Party shall take all reasonable measures (including rerouting of trains over alternate rail lines to the extent practicable) to restore performance of its obligations in a timely manner.

(b) Any Party invoking force majeure pursuant to this Section 15.01 shall immediately notify the other Party by telephone followed by written notice no later than five (5) days thereafter, setting forth the facts or circumstances giving rise to the applicability of this Section 15.01. Upon cessation of the force majeure event, the invoking Party shall immediately notify the other Party of its cessation in the manner prescribed by the preceding sentence. Any dispute respecting the occurrence or cessation of the force majeure event shall be subject to arbitration pursuant to Section 19 of this Agreement.

(c) If, during the Term of this Agreement, either Party invokes force majeure pursuant to this Section 15.01 with respect to the Albany – Saratoga Springs Segment or the Saratoga Springs – Rouses Point Segment, then the Minimum Payment applicable to CSXT's Joint Use Traffic prescribed by Section 9.01(d) shall be pro rated based upon the number of days that the event of force majeure is in effect as compared to the total number of calendar days in the Fiscal Year in which force majeure occurs.

SECTION 16 DEFAULT

16.01. Remedies for Default

In the event of any substantial failure on the part of either Party to perform its obligations under this Agreement, and its continuance in such default for a period of sixty (60) days after

written notice thereof by certified mail from the other Party, the non-defaulting Party shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by such Party of any prior breach thereof, to refer such matter to arbitration pursuant to Section 19 and seek damages and/or specific performance of this Agreement from the defaulting Party. In the case of a substantial default by either Party which continues after adjudication of such default through arbitration, the Party not in default may terminate this Agreement if the Party in default fails to cure such substantial default within: (i) thirty (30) days of the receipt of notice of continued default in the case of such a default in an obligation of one Party to pay the other Party, and (ii) ninety (90) days of the receipt of notice of continued default in the case of any other such default under this Agreement.

SECTION 17

ABANDONMENT AND DISCONTINUANCE

17.01. Abandonment or Discontinuance of Joint Use Lines

(a) Nothing in this Agreement shall be construed to prohibit CSXT from abandoning, or discontinuing service on, the Albany – Fresh Pond Segment and/or the Albany – Saratoga Springs Segment, subject only to CSXT obtaining any required STB or other governmental authorization or exemption for such abandonment or discontinuance of service.

(b) Nothing in this Agreement shall be construed to prohibit D&H from abandoning, or discontinuing service on, the Albany – Saratoga Springs Segment and/or the Saratoga Springs – Rouses Point Segment, subject only to D&H obtaining any required STB or other governmental authorization or exemption for such abandonment or discontinuance of service.

SECTION 18

REGULATORY APPROVAL

18.01. STB Authorization

The parties hereto have entered into this Agreement with the understanding that the joint use of rail lines contemplated herein requires the prior approval of the STB pursuant to 49 U.S.C. § 11323(a)(6). No later than sixty (60) days after execution of this Agreement, the Parties shall file such applications, petitions or other documents as they may deem necessary to obtain any required approval or exemption from the STB for the transactions contemplated by this Agreement. The Parties shall cooperate in the preparation of such applications, petitions or other documents, and in the conduct of any proceedings before the STB in connection with this Agreement.

SECTION 19

ARBITRATION

Any dispute arising between the Parties with respect to this Agreement shall be referred to their respective senior operating officers for resolution. In the event such officers are unable

to resolve the dispute within one hundred eighty (180) days, either Party may submit the dispute for binding arbitration by a single arbitrator before the American Arbitration Association under the Commercial Arbitration Rules. The arbitrator shall be experienced in railroad matters and transportation law. The decision of the arbitrator shall be final and conclusive upon the Parties. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expenses of the arbitrator, if any, shall be borne by CSXT and D&H, with each paying fifty percent (50%) of such compensation, costs and expenses. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

SECTION 20 MISCELLANEOUS

20.01. Expenses

Each Party shall pay its own expenses incident to the preparation and negotiation of this Agreement, the consummation of the transactions contemplated hereby, and its compliance with all its agreements, covenants and obligations contained herein or therein.

20.02. Waiver

No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all Parties. No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.

20.03. Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective successors and permitted assigns.

20.04. Assignment

Neither Party may assign this Agreement, or any of its rights, interests or obligations hereunder, including by operation of law, without the prior consent in writing of the other Party, which consent may be withheld by such other Party at its discretion; provided, however, that upon the occurrence of a change of control as described in Section 10.04(a)(6), if consent to a requested assignment is withheld, the Party seeking assignment shall have the right to terminate this Agreement upon giving to the other Party one hundred eighty (180) days prior written notice

of its intent to terminate this Agreement. During such one hundred eighty (180) day period, the Parties shall negotiate in good faith to reach agreement resolving the notice of intent to terminate. In the event the Parties fail to reach agreement during said one hundred eighty (180) day period, this Agreement shall terminate one year after the date the other Party receives such original notice.

20.05. Notices

(a) Except as otherwise provided in Section 20.05(b), all notices, requests or demands required or permitted by this Agreement ("Notices") shall be in writing. Notices shall be deemed to have been given, forwarded, made or delivered: (a) if delivered in person or by overnight courier service, when received; and (b) if sent by registered or certified mail return receipt requested, on the earlier of the date of receipt or the fifth day after it is mailed. Notices shall be addressed as follows:

If to CSXT:

Director Passenger & Joint Facility Contracts
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

If to D&H:

Senior Manager – Interline
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

With a copy to:

Manager D&H and Special Projects
Canadian Pacific Railway Company
501 Marquette Avenue South – Suite 1525
Minneapolis, MN 55402

(b) In the event one of the Parties is involved in a change in control transaction as described in Section 10.04(a)(6) notice shall be deemed given on the date sent by certified mail, confirmed receipt e-mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If to CSXT:

Chief Operating Officer
CSX Transportation, Inc.
500 Water Street, J120
Jacksonville, FL 32202

With a copies to:

Law Department
CSX Transportation, Inc.
500 Water Street, J150
Jacksonville, FL 32202

and

Director Passenger & Joint Facility Contracts
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

If to D&H:

Senior Manager – Interline
Canadian Pacific Railway Company
Gulf Canada Square
401 9th Avenue SW
Calgary, Alberta, Canada T2P 4Z4

With a copy to:

Manager D&H and Special Projects
Canadian Pacific Railway Company
501 Marquette Avenue South – Suite 1525
Minneapolis, MN 55402

(c) Each Party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

20.06. Confidentiality

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement, or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the Term of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or which is obtained hereunder will be kept confidential and will not be disclosed by either Party to any person other than officers, employees, and attorneys, without the prior written approval of the other Party.

20.07. Entire Agreement

This Agreement (including Appendices) contains the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes any and all oral understandings between the Parties. The Parties hereto, by mutual agreement in writing, may amend, modify and supplement this Agreement.

20.08. Interpretation

Article, Section, and Schedule headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof. This Agreement is the result of mutual negotiations between the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

20.09. Limitation on Benefits

This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the Parties hereto.

20.10. Indemnity Coverage

As a part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party hereto shall extend to and indemnify the parent corporation, subsidiaries and Affiliates of such other Party, and all of their respective directors, officers, agents and employees.

20.11. Governing Law

This Agreement shall be construed in accordance with the domestic laws of the State of New York, without giving effect to any choice or conflict of laws provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. Any legal action or proceeding involving the interpretation or application of this Agreement or arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts of the State of New York.

20.12. Partial Invalidity

If (i) any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by an arbitrator or a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, or (ii) a change in the law or of any statute imposes additional governmental approval requirements with respect to the transactions contemplated by this Agreement or renders such transactions unlawful in any material respect, then the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid, unlawful, unenforceable or subject to additional approval requirements shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In such event, the Parties shall promptly enter into such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid, unlawful or unenforceable provisions in a manner that produces a result which is substantially equivalent to the terms of this Agreement in all material respects, and, in the case of additional approval requirements, the Parties shall promptly take such actions as may be necessary to obtain such additional approval(s).

20.13. Execution

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties' respective authorized officers have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

As to D&H

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

By: 

Fred Green, President and
Chief Executive Officer

WITNESS:

As to CSXT

CSX TRANSPORTATION, INC.

By: _____

Tony L. Ingram
Executive Vice President and Chief
Operating Officer

IN WITNESS WHEREOF, the Parties' respective authorized officers have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

**DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

As to D&H

By: _____
Fred Green, President and
Chief Executive Officer

WITNESS:

CSX TRANSPORTATION, INC.

As to CSXT

By: _____
Tony L. Ingram
Executive Vice President and Chief
Operating Officer

APPENDIX A

CSXT INITIAL TRIP PLAN

The trip plans contained in this Appendix A represent CSXT service as of the Commencement Date and is subject to change.

Per Section 8.01(c), CSXT does not guarantee service.

To New York City (all jobs currently profiled to operate five (5) days per week, Monday through Friday):

| <u>EVT</u> | <u>CITY/STATE</u> | <u>MM</u> | <u>DD</u> | <u>HHMM</u> | <u>TRAIN</u> | <u>BLOCKS</u> | <u>LOR</u> | <u>DWELL</u> | <u>ACCTR</u> |
|------------|-------------------|-----------|-----------|-------------|--------------|---------------|------------|--------------|--------------|
| INT | ALBPORT NY | 09 | 19 | 1440 | | CPRS | | | |
| DEP | ALBPORT NY | 09 | 20 | 0330 | Y32219 | SEL SEL | | 1250 | 1250 |
| ARR | SELKIRK NY | 09 | 20 | 1015 | Y32219 | SEL | 645 | | 1935 |
| DEP | SELKIRK NY | 09 | 20 | 2300 | L43120 | FPNY FPNY | | 1245 | 3220 |
| ARR | NEWYOROAK NY | 09 | 21 | 0630 | L43120 | FPNY | 730 | | 3950 |
| DEP | NEWYOROAK NY | 09 | 22 | 1000 | Y10122 | FPNY FPNY | | 2730 | 6720 |
| INT | FREPOND NY | 09 | 22 | 1100 | Y10122 | NYA | 100 | | 6820 |
| | | | | | | Totals | 1515 | 5305 | 6820 |

From New York City (Q430 is currently profiled to operate six (6) days per week, Monday through Saturday, and Y332 is profiled to operate five (5) days per week):

| <u>EVT</u> | <u>CITY/STATE</u> | <u>MM</u> | <u>DD</u> | <u>HHMM</u> | <u>TRAIN</u> | <u>BLOCKS</u> | <u>LOR</u> | <u>DWELL</u> | <u>ACCTR</u> |
|------------|-------------------|-----------|-----------|-------------|--------------|---------------|------------|--------------|--------------|
| INT | NEWYOROAK NY | 09 | 20 | 1446 | | NYA | | | |
| DEP | NEWYOROAK NY | 09 | 21 | 0130 | Q43021 | SEL SEL | | 1044 | 1044 |
| ARR | SELKIRK NY | 09 | 21 | 0840 | Q43021 | SEL | 710 | | 1754 |
| DEP | SELKIRK NY | 09 | 21 | 2359 | Y32221 | ALCC ALCC | | 1519 | 3313 |
| INT | ALBPORT NY | 09 | 22 | 0230 | Y32221 | CPRS | 231 | | 3544 |
| | | | | | | Totals | 941 | 2603 | 3544 |

**APPENDIX B
CPR INITIAL TRIP PLAN**

Initial performance standard for operations into and out of Saratoga Springs Yard, which may be revised from time to time, pursuant to Section 8.01(b) of this Agreement, are as follows:

[TO BE AGREED TO BY THE PARTIES AT A LATER DATE]

APPENDIX C

**Canadian Pacific Railway – Northeast U.S. Service Area –
Timetable (subject to revision)**

Timetable #5 Effective at 0001 Sunday, February 11, 2007.

APPENDIX D

EXAMPLE CALCULATION OF ANNUAL MINIMUM PAYMENT

Example of instance in which CSXT Fiscal Year Service Fees satisfy the Minimum Payment:

| | | |
|---|----------|----------|
| Minimum Payment for 2011/2012 Fiscal Year: | { | } |
| CSXT Fiscal Year Service Fees for 2011/2012 Fiscal Year: | { | } |
| Service Fee Shortfall Payment Due to D&H for 2011/2012 Fiscal Year: | <u>1</u> | <u>1</u> |

Example of instance in which CSXT Fiscal Year Service Fees do not satisfy the Minimum Payment:

| | | |
|---|----------|----------|
| Minimum Payment for 2011/2012 Fiscal Year: | { | } |
| CSXT Fiscal Year Service Fee for 2011/2012 Fiscal Year: | { | } |
| Service Fee Shortfall Payment Due to D&H for 2011/2012 Fiscal Year: | <u>1</u> | <u>1</u> |

EXHIBIT 15

MINOR TRANSACTION OPERATING PLAN

Exhibit 15
Minor Transaction Operating Plan

D&H and CSXT will coordinate operations on the Joint Use Lines. All train operations over the Saratoga Springs – Rouses Point Segment will be performed by D&H, and all train operations over the Albany – Fresh Pond Segment will be performed by CSXT. Each carrier will perform its own train operations over the Albany – Saratoga Springs Segment.

CSXT will operate over the Albany – Fresh Pond Segment five to seven days per week. Trains destined for New York City will depart Albany in the early morning and arriving in Selkirk Yard in the mid-morning, depart Selkirk in the late evening and arrive at Oak Point Yard in the early morning, depart Oak Point Yard mid-morning and arrive at Fresh Pond approximately one hour after departing Oak Point Yard. The southbound trip from Albany to Fresh Pond takes approximately 68 hours because of the dwell time associated with handling of freight destined for Fresh Pond. The parties have agreed that CSXT will work diligently to reduce the car dwell time.

Northbound trains destined for Albany will depart Oak Point Yard around 1:30 am and arrive in Selkirk Yard around 8:40 am, depart Selkirk Yard in the late evening and arrive in Albany around 2:30 am. The northbound trip from New York City to Albany takes approximately 26 hours, due mostly to the dwell time associated with handling the cars at Selkirk.

D&H will operate over the Saratoga Springs – Rouses Point Segment seven days per week, upon CSXT's request. CSXT will operate over the Albany – Saratoga Springs Segment seven days per week. Northbound trains containing Joint Use traffic destined to Rouses Point Junction will depart Selkirk in the early morning, arrive at (and depart from) D&H's Saratoga Springs Yard in mid morning, and arrive at Rouses Point Junction in late afternoon. (D&H will

handle such trains beyond Rouses Point Junction into the Montreal terminal area.) Southbound Joint Use traffic moving over the Saratoga Springs – Rouses Point Segment to Selkirk will depart the Montreal terminal area in the morning, arrive at Saratoga Springs Yard in the late evening, and arrive at Selkirk Yard in the early morning. The trip between Selkirk Yard and Rouses Point takes approximately 14 hours with minimal dwell time at Saratoga Springs.

APPENDIX

APPENDIX 1-A

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES
CSX TRANSPORTATION, INC.

**Appendix 1-A - Effects on Applicant Carriers' Employees
CSX Transportation, Inc.**

**Employees Affected by the Joint Use Agreement Dated
December 1, 2009 Between CSXT and D&H**

| Current Location | Job Classification / Craft | Jobs Transferred To | Jobs Abolished | Jobs Created | Year |
|-------------------------------------|----------------------------|---------------------|----------------|--------------|------|
| Massena, NY to Huntingdon, PQ | BLET Engineer | N/A | 1 | 0 | 2010 |
| Massena, NY to Huntingdon, PQ | UTU Conductor | N/A | 1 | 0 | 2010 |
| Massena, NY to Syracuse, NY | BLET Engineer | N/A | 3 | 1 | 2010 |
| Massena, NY to Syracuse, NY | UTU Conductor | N/A | 3 | 1 | 2010 |
| Syracuse, NY to Watertown, NY | BLET Engineer | N/A | 3 | 1 | 2010 |
| Syracuse, NY to Watertown, NY | UTU Conductor | N/A | 3 | 1 | 2010 |
| Syracuse, NY to Selkirk, NY | BLET Engineer | N/A | 3 | 0 | 2010 |
| Syracuse, NY to Selkirk, NY | UTU Conductor | N/A | 3 | 0 | 2010 |
| Selkirk, NY to Saratoga Springs, NY | BLET Engineer | N/A | 0 | 3 | 2010 |
| Selkirk, NY to Saratoga Springs, NY | UTU Conductor | N/A | 0 | 3 | 2010 |

APPENDIX 1-B

**EFFECTS ON APPLICANT CARRIERS' EMPLOYEES
DELAWARE AND HUDSON RAILWAY COMPANY, INC.**

**Appendix 1-B - Effects on Applicant Carriers' Employees
Delaware and Hudson Railway Company, Inc.**

**Employees Affected by the Joint Use Agreement Dated
December 1, 2009 Between CSXT and D&H**

| Current Location | Job Classification / Craft | Jobs Transferred | Jobs Abolished | Jobs Created | Year |
|-------------------------|-----------------------------------|-------------------------|-----------------------|---------------------|-------------|
| Saratoga Springs, NY | BLET Engineer | None | 1 | 3 | 2010 |
| Saratoga Springs, NY | UTU Conductor | None | 1 | 3 | 2010 |

One locomotive engineer (BLET) assignment and one conductor (UTU) assignment, which currently operate D&H's trackage rights trains over CSXT's East-of-the-Hudson line, will be discontinued. The home terminal for the employees filling these assignments is Saratoga Springs. Upon commencement of joint use operations, three new engineer (BLET) assignments and three new conductor (UTU) assignments will be created to operate D&H trains over the Saratoga Springs - Rouses Point Segment. The home terminal for the employees filling these assignments will be Saratoga Springs. Accordingly, these changes will not cause a reduction in D&H engineer or conductor employment or work opportunities, either at Saratoga Springs or elsewhere.

APPENDIX 2-A

**OPINION OF COUNSEL
CSX TRANSPORTATION, INC.**



Law Department
500 Water Street, J150
Jacksonville, FL 32202
TEL. 904-359-1229
EFAX. 904-245-3357
Steven_Armbrust@CSX.com

STEVE ARMBRUST
COUNSEL
BUSINESS & GOVERNANCE

Admitted in NY - Not Admitted in FL
FL Authorized House Counsel

April 26, 2010

Ms. Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Finance Docket No. 35348, CSX Transportation, Inc. and Delaware and
Hudson Railway Company, Inc., d/b/a Canadian Pacific-Joint Use

Dear Ms. Brown:

As counsel for CSX Transportation, Inc. ("CSXT"), I am familiar with the Application of CSXT and the Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific for the joint use of the rail line between Rouses Point, NY and Fresh Pond in New York City, NY, and am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven C. Armbrust", written in a cursive style.

Steven C. Armbrust

SCA/pkw

APPENDIX 2-B

OPINION OF COUNSEL
DELAWARE AND HUDSON RAILWAY COMPANY, INC.



**CANADIAN
PACIFIC**

Legal Services

Suite 1525
501 Marquette Avenue S
Minneapolis Minnesota
55402

Fax (612) 904-597

Direct Line (612) 904-5967
e-mail: bill_tuttle@cp.ca

Calgary

April 27, 2010

PA Guthrie, Q.C.
Vice President, Law
and General Counsel

K L Fleming
Senior Counsel &
Corporate Secretary

M Shannon
Senior Counsel

K E Bilson
J E Erion
C J Goldie
C P Quach
J P Riley
R Smurchyk
R V Hampel
B Berze

Minneapolis
W M Tuttle

Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Finance Docket No. 35348, *CSX Transportation, Inc. & Delaware and
Hudson Railway Company, Inc., - Joint Use Agreement*

Dear Sirs:

As counsel for Delaware and Hudson Railway Company, Inc. ("D&H"), I am familiar with the Application filed by CSX Transportation, Inc. ("CSXT") and D&H (collectively, "Applicants") pursuant to 49 U.S.C. § 11323(a)(6) and 49 C.F.R. § 1180.2(c), seeking approval from the Surface Transportation Board for CSXT and D&H to commence operations pursuant to that certain New York Joint Use Agreement dated as of December 1, 2009 (the "Joint Use Agreement"). I am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Sincerely,

Delaware and Hudson Railway Company, Inc.

By: 
William M. Tuttle
Senior Counsel – U.S.

ATTACHMENTS

ATTACHMENT 1

VERIFIED STATEMENT OF
STEVEN A. POTTER

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35348

**CSX TRANSPORTATION, INC. & DELAWARE AND HUDSON RAILWAY
COMPANY, INC. – JOINT USE AGREEMENT**

VERIFIED STATEMENT OF STEVEN A. POTTER

My name is Steven A. Potter. I am Assistant Vice President Network Planning and Joint Facilities for CSX Transportation, Inc. ("CSXT"). I have 28 years experience in the rail industry and have served in my current position since April 2009. As Assistant Vice President Network Planning and Joint Facilities, my responsibilities include directing and overseeing Operations Planning, including network capacity analysis and capital budgeting, passenger train policy development and contract negotiations, joint facility agreements with other railroads and passenger access and operating agreements. My business address is 500 Water Street, Jacksonville, Florida 32202.

The purpose of my Verified Statement is to describe the proposed transaction and its benefits, competitive impact and employee impact.

SUMMARY OF STATEMENT

In this Application, CSXT and Delaware and Hudson Railway Company, Inc. ("D&H") are seeking approval to enter into a joint use arrangement pursuant to which the carriers would jointly use certain rail lines in New York State consisting of segments owned by both CSXT and D&H (the "Transaction"). Specifically, the proposed joint use arrangement includes D&H's rail line between Saratoga Springs, NY and Rouses Point Junction, NY (the "Saratoga Springs – Rouses Point Segment"), D&H's rail line between Albany, NY and Saratoga Springs, NY (the

“Albany – Saratoga Springs Segment”) and CSXT’s rail line between Albany, NY and Fresh Pond Junction, NY (the “Albany – Fresh Pond Segment”) (collectively, the “Joint Use Lines”). The Transaction supports CSXT’s effort to drive operational excellence, improve network efficiency and create greater capacity and improved service to meet current and future customer expectations. In addition, CSXT expects the Transaction to attract additional freight to rail that currently moves via other modes of transportation.

The Transaction will not adversely impact competition. To the contrary, it will provide both CSXT and D&H with improved service products that enhance the ability of each railroad to compete not only with one another, but also for freight that currently moves via other modes of transportation, such as long and short haul trucking companies and barge and ocean shipping companies.

Access to the Saratoga Springs – Rouses Point Segment provides CSXT with a dramatically improved route for traffic moving between Eastern Canada and the Eastern United States. As such, the Transaction promotes the public interest by creating a more reliable, efficient and competitive rail network. In addition, the public will benefit from a lower cost CSXT transportation option, as well as from efficiencies created by concentrating the majority of cross-border rail traffic activity between the United States and the Province of Quebec at single location (Rouses Point Junction, NY), thus better leveraging border protection assets and resources. The Transaction will result in relatively small labor impacts, and any adversely affected employees will be eligible for benefits under the employee protective conditions that Applicants anticipate will be imposed by the Board. The Transaction will also generate beneficial regional environmental impacts, by reducing train and locomotive miles and diverting freight from motor carriers to more fuel-efficient rail service.

Implementation of the Joint Use Agreement will not result in CSXT eliminating service to local customers located on its St. Lawrence and Montreal Subdivision (the “Massena Line”). CSXT is committed to providing service to those customers that matches economic activity.

I. The Proposed Joint Use Arrangement Improves Connectivity Between Rail Lines Serving Eastern Canada And The Eastern United States.

CSXT is committed to improving its operations serving and connecting Eastern Canada and the Eastern United States. The Massena Line has recently been a low-density line used for the primary purpose of transporting traffic interchanged between Canadian National Railway Company (“CN”) and CSXT (and its predecessor, Conrail) for movement to and from points in Eastern Canada. In recent years, such interchange or overhead traffic has outpaced local freight traffic on the Massena Line.

At the time of the acquisition of Conrail by CSXT and Norfolk Southern Railway Company (“NS”), the Massena Line was the primary gateway between CN and Conrail for Eastern Canadian freight. The split of Conrail between CSXT and NS fragmented the Massena Line’s overhead traffic, with NS-CN traffic now interchanged at Buffalo, NY or handled in conjunction with D&H between Eastern Canada and central New York via the Rouses Point gateway.

The Massena Line’s overhead freight moves in an L-shape between CSXT’s Selkirk Yard, located near Albany, NY and Huntingdon, PQ, via Syracuse, NY. CSXT’s current route between Selkirk and Huntingdon is approximately 370 miles, consisting of 214 miles between Syracuse and Huntingdon and 156 miles between Syracuse and Selkirk Yard. It is about another 33 miles via CN from Huntingdon to Montreal.

CSXT’s ability to utilize the Saratoga Springs – Rouses Point Segment under the Joint Use Agreement will reduce one-way transit miles between Selkirk and Montreal by 35 percent

(from 403 miles to 261 miles) and will reduce over-the-road transit time (excluding terminal dwell time) for such movements by 45 percent (from approximately 29 hours to approximately 16 hours). These considerable reductions in mileage and transit time will directly lower CSXT's operating costs, increase operating efficiencies, and improve customer service.

With the ability to utilize the Joint Use Lines, CSXT will be able to provide better customer service, enhanced access to existing markets, and improved service reliability.

II. The Public Will Benefit From the Transaction.

The primary public benefit of the proposed joint use arrangement is more reliable, competitive and lower cost rail service. The Transaction will improve rail operations and connectivity between Eastern Canada (including Montreal, one of Canada's largest metropolitan areas) and the Eastern United States. As the United States and Canada become more interdependent, the ability to transport goods reliably, safely and efficiently is critical to promoting economic activity and growth.

The Rouses Point Junction, NY border crossing between the United States and Canada is the United States Customs and Border Protection's ("CBP's") primary freight rail checkpoint for traffic moving to or from the Province of Quebec. D&H's line via Rouses Point Junction currently handles about three times the number of freight train border crossings as the crossing at Huntingdon. The consolidation of cross-border train inspections at Rouses Point Junction will enable CBP to better leverage its personnel and resources in reviewing and clearing rail freight moving between the United States and Canada. The proposed operating plan affords sufficient train spacing so that it will not adversely impact the CBP's ability to process rail-based freight moving between the United States and Canada efficiently.

One obvious way to reduce costs and improve efficiency in railroading is to reduce the number of Gross Ton Miles (“GTM”) traveled. Lower GTMs translate into lower locomotive, fuel and freight car costs.

Rerouting traffic moving between Selkirk and Montreal from the Massena Line to the Saratoga Springs – Rouses Point Segment will save 142 miles in each direction. For each gross ton moved between Selkirk and Montreal over the Saratoga Springs – Rouses Point Segment, CSXT will save 142 GTMs. CSXT estimates that use of the Joint Use Lines will save it approximately 442,000,000 GTMs annually compared to using the current Massena Line.

By reducing GTMs by approximately 442,000,000, CSXT expects to achieve locomotive and fuel related savings, increased freight car utilization and other benefits, resulting in total annual savings of about \$280,000 from CSXT’s use of the Joint Use Lines.

III. The Proposed Joint Use Arrangement Will Enhance Competition.

The Transaction will not have any anticompetitive effects. CSXT will continue to serve all local shippers along its Massena Line and will continue to serve all shippers between Albany Port, NY and New York City, NY. D&H will continue to serve all shippers between Albany Port, NY and Rouses Point Junction, NY. In addition, D&H will continue to offer rail service between Albany and Fresh Pond Junction, NY (as it currently does via trackage rights), and will continue to have access, via a contract switch, to all of the shippers in the New York City area that D&H can serve today. In other words, no shipper will lose a competitive rail option as a result of the Transaction.

To the contrary, the Transaction will increase competition between CSXT and D&H by enabling both carriers to offer better service products. The proposed joint use arrangement provides D&H with an improved service product for freight moving to and from New York City

(including the ability to increase service frequency from two days per week to five to seven days per week). This is traffic that the parties currently compete for.

Likewise, access to the Saratoga Springs – Rouses Point Segment will enable CSXT to offer improved service to and from Eastern Canada. D&H currently competes on traffic that may move over this route to D&H (or Canadian Pacific) served locations, as well as to other rail partners in the Eastern United States.

The Transaction will also enhance competition by enabling both carriers to offer service products that can compete more effectively with the services offered by other modes of transportation, such as over the road trucks and waterway transit.

IV. Labor Impacts Would be Relatively Small and Regional Environmental Impacts Will Be Reduced.

The Application contains a detailed estimate of the anticipated labor impacts stemming from the Transaction. As a result of the Transaction, train starts on the Massena Line will be reduced, while the Joint Use Lines will experience an increase in train starts. Due to the vast difference in mileage under which CSXT employees will operate, train start additions will not match train start reductions. Nevertheless, CSXT expects that these operational changes will have relatively small impact on CSXT employees. Specifically, CSXT estimates that there will be ten CSXT engineer (BLET) jobs and ten CSXT conductor (UTU) jobs abolished, but at the same time five CSXT engineer jobs and five CSXT conductor jobs will be created, as existing trains are eliminated and new trains are created.

The majority of the benefits of implementing this Transaction are attributable to improved transit times, better asset utilization and the resulting productivity improvements. In addition, CSXT anticipates that its greatly improved service product will enable it to attract more

freight to its routes utilizing the Joint Use Lines. The costs savings will be attained over time and will be attributed mostly to improved asset utilization.

The overall environmental impact of the Transaction will be decidedly positive. CSXT and D&H will utilize fewer locomotives over fewer miles, which in turn will result in less fuel consumption and particulate matter emissions.

V. Conclusion.

The proposed Transaction provides a significantly more reliable and efficient freight rail route for CSXT for traffic moving between Eastern Canada and the Eastern United States. CSXT believes the public will benefit from the Transaction. The Transaction will enhance competition, not only between CSXT and D&H, but also with other transportation providers serving the freight lanes between Canada and the United States. Therefore, CSXT respectfully requests that the Board approve the joint use arrangement negotiated at arms length by CSXT and D&H.

VERIFICATION

I, Steven A. Potter, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on April 26, 2010.

A handwritten signature in black ink, appearing to read "S.A. Potter", is written over a horizontal line.

Steven A. Potter

ATTACHMENT 2

VERIFIED STATEMENT OF
DAVE CRAIG

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35348

**CSX TRANSPORTATION, INC. & DELAWARE AND HUDSON RAILWAY
COMPANY, INC. – JOINT USE AGREEMENT**

VERIFIED STATEMENT OF DAVE CRAIG

My name is Dave Craig. I am Assistant Vice President - Strategic Network Development of Canadian Pacific Railway Company ("CPR"). My business address is Gulf Canada Square, 401 9th Avenue S.W., Calgary, AB, T2P 4Z4, Canada. As Assistant Vice President - Strategic Network Development, I am responsible for a variety of projects designed to ensure that CPR's rail network matches its evolving strategic requirements. Such projects include railroad line sales and acquisitions, co-production opportunities, interline agreements with other railroads, capacity assessment, industrial development and development of business with our short line partners. I assumed my current position in 2007. I began my career with CPR as Assistant Manager-Profit Analysis in Montreal, PQ in 1978. Since that time, I have held a number of positions with increasing responsibility for matters relating to finance, marketing, operations and strategy. Prior to assuming my current position, I served as General Manager Strategic Projects from 2001 to 2007, where I was responsible for, among other things, our business unit in Mexico and coordinating CPR's acquisition of the Dakota, Minnesota and Eastern Railroad Corporation.

I am submitting this Verified Statement in support of the Application by CPR's wholly-owned subsidiary, Delaware and Hudson Railway Company, Inc. ("D&H") and CSX Transportation, Inc. ("CSXT") for authority to implement a Joint Use Agreement. My testimony will explain D&H's reasons for pursuing the joint use arrangement with CSXT, the strategic

benefits of the transaction from D&H's perspective, and the public benefits that will result from implementation of the proposed Joint Use Agreement.

D&H owns and/or operates rail lines in the States of New Jersey, New York and Pennsylvania. D&H currently accesses the New York City metropolitan area via trackage rights over CSXT's "East-of-the-Hudson" line and a related switching agreement with CSXT. Specifically, D&H has overhead trackage rights over CSXT's line between Schenectady, NY and Oak Point Yard, NY, with the right to access customers in The Bronx and Queens via switching performed by CSXT. D&H also has overhead trackage rights over CSXT's line between Oak Point Yard and Fresh Pond Junction, NY for the purpose of interchanging traffic with the New York & Atlantic Railway Company ("NY&A").

D&H obtained those so-called "East-of-the-Hudson" rights in connection with the acquisition of Conrail by CSXT and Norfolk Southern Railway Company ("NS"). *See CSX Corp. et al. – Control – Conrail Inc., et al.*, 3 S.T.B. 196, 282-283 (1998) ("*Conrail*") (imposing condition requiring CSXT to negotiate haulage or trackage rights on East-of-the-Hudson line with CPR). D&H's existing rights over the East-of-the-Hudson line were granted to "restore a modicum of competition that was lost in the financial crisis that led to the formation of Conrail." *Conrail* at 283. D&H typically operates two trains per week in each direction between Albany and New York City via a route consisting of D&H's line between Albany and Schenectady, NY; trackage rights over CSXT's line between Schenectady and Poughkeepsie, NY; trackage rights over lines owned by Metro North Commuter Railroad between Poughkeepsie and MP 7 near High Bridge, NY (the point of connection to the Oak Point Link and Harlem River Yard); and trackage rights over CSXT and Amtrak lines between Harlem River Yard, Oak Point Yard and Fresh Pond Junction, NY.

The lack of a daily service offering between Albany and New York City has hampered D&H's ability to compete successfully for traffic in that corridor. Daily service is an important selling point in the marketplace, particularly for customers who have the option to use other rail service, trucks or other modes of transportation. However, D&H's traffic volume in recent years has simply been too low to support more frequent train service between Albany and New York City. Indeed, D&H's Albany – New York City traffic volume has declined over the past five years, and D&H trains in the corridor currently average less than 27 revenue carloads per train. The need to operate such short trains makes it impossible for D&H to achieve economies of density, and increases D&H's operating costs.

The transaction proposed by this Application involves the joint use of certain rail lines in New York State by CSXT and D&H (including segments owned by each carrier). Specifically, the CSXT/D&H Joint Use Agreement encompasses D&H's rail line between Saratoga Springs, NY and Rouses Point Junction, NY (the "Saratoga Springs – Rouses Point Segment"). D&H's rail line between Albany, NY and Saratoga Springs, NY (the "Albany – Saratoga Springs Segment") and CSXT's rail line between Albany, NY and Fresh Pond Junction, NY (the "Albany – Fresh Pond Segment") (collectively, the "Joint Use Lines").

Under the Joint Use Agreement, all train operations over the Saratoga Springs – Rouses Point Segment will be performed by D&H, and all train operations over the Albany – Fresh Pond Segment will be performed by CSXT. Each carrier will perform its own train operations over the Albany – Saratoga Springs Segment. This assignment of operating responsibility will improve efficiency by combining D&H's modest traffic volumes with CSXT's larger volumes in trains moving between Albany and New York City, and by reducing the number of carriers

conducting separate freight operations over the Albany – New York Segment, a busy corridor that is used not only by CSXT and D&H but also by Amtrak and Metro North’s commuter trains.

D&H’s handling of trains containing CSXT joint use traffic between Saratoga Springs and Rouses Point will likewise promote efficiency. D&H already handles traffic for the account of NS and Canadian National Railway Company (“CN”) via the Saratoga Springs – Rouses Point Segment. Our experience with those arrangements demonstrates that having D&H control and perform all train movements to and from Rouses Point simplifies operations (by eliminating the need to coordinate access among multiple railroads) and better leverages the overall capacity of the Saratoga - Rouses Point Segment. Moreover, trains carrying CSXT joint use traffic will need to travel beyond Rouses Point to and from the Montreal terminal area. D&H (which already operates between Rouses Point Junction and Montreal) plans to enter into an arrangement with CN pursuant to which D&H will handle CSXT/CN interchange traffic to and from the Montreal terminal area (just as D&H does today for traffic moving in the accounts of NS and CN). This will eliminate the need for a physical interchange of CSXT/CN interline traffic at Rouses Point Junction, NY.

The proposed joint use arrangement will generate significant benefits for D&H, for CSXT and for the public:

From D&H’s perspective, moving traffic to and from the New York metropolitan area in CSXT’s regularly scheduled train service will obviate the need for D&H to operate its own low-density trains. This, in turn, will reduce D&H’s costs and improve the efficiency of its service in the Albany – New York City corridor. More importantly, because CSXT (unlike D&H) has sufficient traffic to support service between Albany and New York City between five and seven days per week, D&H will – for the first time – gain the ability to offer shippers daily rail service.

D&H anticipates that this feature of the joint use arrangement will significantly enhance D&H's competitiveness in the Albany – New York City corridor. The joint use arrangement will also enable D&H to redeploy to more productive uses locomotives that currently power D&H's low-volume train movements in the Albany – New York City corridor. CSXT's joint use of the Saratoga Springs – Rouses Point Segment will benefit D&H by increasing traffic density (and D&H's revenues) along that portion of its system.

CSXT witness Potter discusses the substantial benefits of the proposed transaction from CSXT's perspective. Most notably, access to the Saratoga Springs – Rouses Point Segment will give CSXT a route (via Rouses Point) for traffic moving to and from Eastern Canada that is 142 miles shorter than CSXT's existing 403-mile route via Huntingdon, PQ. As witness Potter explains, this will generate savings for CSXT by reducing transit time, enhancing locomotive and car utilization, and reducing fuel consumption.

The proposed transaction will generate significant benefits for the public as well. D&H's ability to move traffic in CSXT trains between Albany and New York City – and to offer customers service five to seven days per week – will greatly enhance the D&H competitive option in the corridor. At the same time, the Joint Use Agreement expressly preserves D&H's right to serve every customer in The Bronx and Queens that it has the right to serve today under its existing trackage rights and switching arrangements, as well as the continuing right to interchange traffic with the NY&A at Fresh Pond, NY. Thus, the proposed transaction will enhance competition not only between D&H and CSXT, but also with motor carriers (who handle the majority of the freight traffic moving between New York City and points to the north), thereby promoting the Board's objective in imposing the East-of-the Hudson condition in the *Conrail* proceeding. CSXT's newly-created right to move overhead traffic via the Saratoga

Springs – Rouses Point Segment will likewise create a more competitive and efficient rail service offering for shippers whose freight moves to and from points in Eastern Canada.

Eliminating separate D&H trains on the Albany – Fresh Pond Segment will simplify freight operations in that corridor and reduce the number of freight train movements on lines that are shared with passenger services operated by Amtrak and Metro North. The reduction in train movements made possible by the Joint Use Agreement will also generate a corresponding reduction in fuel consumption, emissions and noise along the Albany – Fresh Pond Segment and CSXT's Massena Line.

The proposed transaction is not expected to have an adverse impact on D&H employees. The elimination of D&H's separate train operations between Albany and Fresh Pond will result in the abolishment of four (4) D&H train starts per week, affecting one (1) D&H locomotive engineer (BLET-represented) and one (1) D&H conductor (UTU-represented). Crews for the D&H assignments currently operating the Albany – Fresh Pond trackage rights trains report to work at D&H's Kenwood Yard (in Albany, NY), but they are supplied from a pool based at Saratoga Springs, NY. The introduction of trains carrying CSXT joint use traffic on the Saratoga Springs – Rouses Point Segment is expected initially to require the creation of three (3) new engineer assignments and three (3) new conductor assignments at the Saratoga Springs home terminal, thereby creating work opportunities for the D&H train and engine service employees who would otherwise be affected by the elimination of D&H's trackage rights operations between Albany and Fresh Pond, NY. Accordingly, the overall impact of the proposed transaction on D&H employees is expected to be positive.

In summary, the CSXT-D&H Joint Use Agreement is a pro-competitive arrangement that will produce significant benefits for both the participating railroads and the public. D&H will

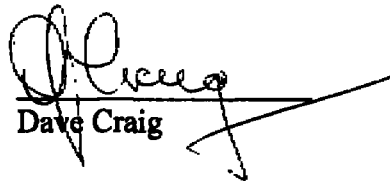
improve its ability to serve its current customers in the Albany – New York City corridor, and will be better positioned to compete with both CSXT and motor carriers for new business.

Access to the Saratoga Springs – Rouses Point Segment will significantly improve the efficiency and cost-competitiveness of CSXT's service between the Eastern United States and Eastern Canada. Both CSXT and D&H will reduce their costs, enhance their operational efficiency, and improve the utilization of their locomotives, cars and other assets. All of these benefits can be realized without any diminution in rail competition; to the contrary, the proposed transaction will strengthen both intramodal and intermodal competition in the corridors served by the Joint Use Lines. For these reasons, the Board should promptly approve the Application.

VERIFICATION

I, Dave Craig, declare under penalty of perjury that the foregoing is true and correct.

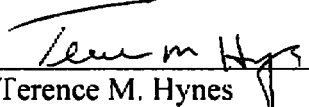
Further, I certify that I am qualified and authorized to file this verified statement.


Dave Craig

Executed on April 1, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served pursuant to the requirements of 49 C.F.R. §1180.4(c)(5) and on the following parties by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the District of Columbia.


Terence M. Hynes

April 27, 2010